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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ORGANIZATION

THURSDAY, MAY 21, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Reville, D. (Riverdale NDP) for Mr. Charlton
Reycraft, D. R. (Middlesex L) for Mr. Polsinelli
Smith, D. W. (Lambton L) for Mr. Ward

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, May 21, 1987

The committee met at 10:22 a.m. in room 2.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman.

Mr. O'Connor: In nomination for our chairman, I place the name of the honourable member for Sarnia (Mr. Brandt), only because he told me to.

Clerk of the Committee: Are there any further nominations?

There being no further nominations, I declare nominations closed and Mr. Brandt elected chairman of the committee.

Mr. Chairman: I want to tell the members of the committee how deeply grateful I am for this responsibility.

The second order of business will be the election of a vice-chairman. I will now open the meeting to any nominations from the floor for the position of vice-chairman.

Mr. D. R. Cooke: It reminds me of a story, Mr. Chairman.

Mr. Chairman: I think now would be an appropriate time to tell it. Why don't you?

Mr. D. R. Cooke: When I was doing this in the finance committee a week or so ago, the vice-chairman was supposed to be Mr. Ferraro and I looked down to Mr. Epp, who put up his hand and said, "I nominate David Ramsay." Ferraro turned to him, with Hansard on, and said, "You dope."

Mr. Chairman: Was there by chance a rebuttal?

I will call a second time for any nominations from the floor with respect to the position of vice-chairman.

Mr. O'Connor: I nominate the member for St. George (Ms. Fish).

Mr. Chairman: All right, we have placed in nomination the name of Ms. Susan Fish. Are there any further nominations from the floor?

There being none, I will call the question closed and declare Ms. Fish as having won, with a great deal of unanimous support, the position of vice-chairman.

Mr. D. W. Smith moves, unless otherwise ordered, a transcript of all committee hearings be made.

Motion agreed to.

Mr. Chairman: The next item we will be dealing with is the budget. I believe you have the information before you.

The budget, as most of the committee members know, is a best guess. Perhaps for the newer members of the committee I could add a few words of enlightenment with respect to the budget. This is a best guess, obviously. We do not know what order of business is going to come before us, but we have to build into the budget certain requirements in terms of the anticipated expenditures.

You are free to pick away at the budget, change numbers, decrease or increase, that is the committee's prerogative, but this is the best guess of the clerk. Perhaps the clerk could indicate some of the thinking that has gone into this document so that you will have some additional information.

Clerk of the Committee: In preparing the budget I based it on the assumption that we would be here for a full year; that the committee would be sitting on two different subjects, one in the summer recess probably and one in the winter recess; allowing for six weeks during each period; allowing for advertising on the two subjects; and allowing for two weeks of travel in one of those periods or one week in each in case we need it.

Mr. D. R. Cooke: Can we advertise during the writ?

Clerk of the Committee: That is what it is based on.

Mr. Chairman: Since your first assumption is wrong.

Mr. Reycraft: That was another best guess.

Mr. Chairman: I can give you a number of best guesses.

Ms. Fish: If we do not use it all up we will just spend a little less, and if we need some more the chairman will go the Board of Internal Economy.

Mr. Chairman: That is right.

Mr. Rowe: If we divide the four days that are left then we would get \$420-some dollars that are left.

Ms. Fish: That is carried.

Mr. Chairman: Ms. Gigantes moves that the committee accepts the budget.

Motion agreed to.

Ms. Gigantes: With thanks to the clerk.

Mr. Chairman: I believe there are some comments from members of the committee in regard to future business. I am open now. Mr. O'Connor has his hand up and then Ms. Gigantes.

Mr. O'Connor: Bill 42 was referred to this committee for committee hearings and/or clause-by-clause analysis on June 26, 1986, nearly a year ago now. The committee has been extremely busy and has been unable to fit into its schedule public hearings or clause-by-clause analysis for that particular bill which deals with the regulation and certification of paralegal agents in Ontario.

I would suggest that it be given priority consideration by the members to commence perhaps three or four days of public hearings. I am continued to be quite heavily lobbied by various interest groups on that subject from the paralegals themselves, to the Law Society of Upper Canada to the Canadian Bar Association and to quite a large number of local county bar associations that quite obviously, on behalf of their members, are interested in the subject.

1030

I have been told that a couple of groups are ready to make a presentation to our committee virtually immediately--that is, at the next meeting of this committee--if the time were made available to them. They have indicated that their briefs are ready and that they need very little time to rearrange schedules to be here before us.

Given that circumstance and given the fact that I presume we will be meeting on Mondays and Tuesdays after routine proceedings, as we were before, I would suggest that because we can launch into those public hearings fairly quickly and that because the subject has been before us for nearly a year, we deal with it as a top priority. I would suggest that for the consideration of the committee.

Mr. Chairman: Could I ask one question? You indicated there were a couple of groups ready to go. Who might they be?

Mr. O'Connor: The groups that I know can immediately make a presentation to us are the Paralegal Association of Ontario; Pointts Ltd., which is one of the two largest paralegal organizations in the province; shortly followed by the Canadian Bar Association and the Law Society of Upper Canada, both of which have prepared positions and presented them to the Attorney General (Mr. Scott) and can modify those positions, I presume, and attend here rather quickly. It would not take a lot of preparation on their part. The groups that would require more lead time would be the county bar associations. That is presuming of course that we intend not to advertise widely--we would need more time for that obviously--but that we would contact these groups we know are interested, which would immediately prepare their remarks and be here within a couple of days.

Mr. Chairman: We will not be in a position today to talk specific dates or schedule as such. The only thing we can perhaps do is determine the order of business, depending on how life unfolds in the days ahead.

Mr. O'Connor has put forward the position that Bill 42 should be a priority bill and the reasons therefor. If there is any further discussion on Bill 42, I will acknowledge those speakers now. Otherwise, I will move on to Ms. Gigantes, who had her hand up next, but I believe hers was on another matter.

Ms. Gigantes: It is on scheduling, which is the same matter.

Mr. Chairman: I was just going to finish up with Bill 42, but I suppose we can talk about it. Go ahead.

Ms. Gigantes: I thought we were kind of nominating our favourite topics for business.

Mr. Chairman: Yes, that is really what we are doing.

Ms. Gigantes: As part of that nominating process, I would like to suggest that we deal with Bill 10, which was referred to committee on May 14. Bill 10 deals with the status of roomers and boarders in Ontario; namely, it provides that they come under the aegis of the Landlord and Tenant Act. There will be groups which will want to present. We feel about four days would probably be sufficient for completion of the work of the committee, including public hearings. We would propose to move on that as quickly as we could. We are happy to discuss how we can fit the timetable together.

Mr. Chairman: Okay. So we have Bill 42 and Bill 10 put before the committee. Anything further?

Mr. D. R. Cooke: I do not have strong feelings as to which one should go first. I would comment that in so far as Bill 10 is concerned, it represents an excellent thought and the result of a very thorough report having been done on the subject. In fact it may well be something that the government will be looking at but that would need a great deal of revision. On the other hand, I note that Bill 42 is much more comprehensive and has been hanging around for a year.

Mr. O'Connor: That is why it should go first.

Mr. Reville: Give the government a chance to think.

Mr. D. R. Cooke: For that reason, I would prefer that Bill 42 be dealt with first.

Ms. Gigantes: In terms of dealing with Bill 42, we are talking about two weeks of regular scheduled time? Is that our understanding?

Mr. O'Connor: I suppose we should talk about the manner in which we would invite groups to address us, whether it would be a restricted list we would agree on--and thus we could control the time--or whether we would want to do any kind of advertising.

I would suggest the broad advertising may not be necessary. In that case, the number of groups that would come would be at least four or five. The variable factor is the number of county bar associations that might want to appear. There are 42 or 44 in the province, and I can foresee three or four of them, maybe five, wanting to appear. That would mean, therefore, perhaps three or four days of public hearings and a couple of days of clause-by-clause consideration, which, you are correct, would be two weeks of sittings.

Ms. Gigantes: Our committee sessions last how long per day? Three and a half hours?

Clerk of the Committee: Two and a half hours after routine proceedings on Monday and Tuesday. I understand the schedule is supposed to be the same whenever it is tabled.

Ms. Gigantes: It is two and a half hours, not three and a half hours.

Clerk of the Committee: Depending on how long question period lasts and whether there are ministers' statements.

Ms. Gigantes: So we can count on five hours a week.

Clerk of the Committee: Yes.

Ms. Gigantes: If we meet on time.

Mr. Rowe: If we can get the chairman here to start on time.

Mr. Chairman: I recall waiting in the hallway for the remnants of this committee to arrive just a few moments ago.

Mr. Rowe: I am referring to a normal sitting day.

Mr. Chairman: Rarely is the chairman ever tardy or late.

Mr. Reville: Or both.

Mr. Chairman: It has happened on occasion, but only with pressing--

Mr. Rowe: I suggest we do not open that up for discussion.

Ms. Gigantes: If I could continue this discussion of timing, what you seem to be saying, Terry, is that it would take us a maximum of two weeks to deal with it.

Mr. O'Connor: Yes, approximately that, depending upon how many county bar associations might want to attend.

Mr. D. R. Cooke: I am a little surprised Mr. O'Connor is suggesting there be no advertising on this bill. I would think, at the very least, the Consumers' Association of Canada would be interested, and there may be others. I recall other occasions when you faulted the committee for not advertising.

Mr. O'Connor: I am completely open. It is just that if we do have advertising, that considerably lengthens the time we would be here with public hearings. I am content with that, obviously. I do not care one way or the other.

Mr. D. R. Cooke: I am not saying there should be advertising. Probably there should not be advertising, because it tends to be a professional issue, but I think it is important that consumer groups are aware that we are considering it.

Ms. Fish: We could write to them and let them know.

Ms. Gigantes: We could even call them.

Ms. Fish: We could even call them.

Ms. Gigantes: Mr. Chairman, we are satisfied to go ahead with Bill 42 and then move to Bill 10, if that is agreeable.

Mr. Chairman: Okay, let us get a motion, just so we have it on the books. Bill 42 and Bill 10, in that order. Who wants to move it?

Mr. O'Connor moves that the committee, under the heading of future business, deal immediately with public hearings on Bill 42, followed thereafter by clause-by-clause analysis of Bill 42, followed thereafter by public hearings on Bill 10, followed then by clause-by-clause analysis of Bill 10.

Motion agreed to.

Mr. Reville: With respect to Bill 10, if you are trying to get a handle on the kind of time that might involve, it seems to me a similar time line to that suggested by Mr. O'Connor would work for that bill as well.

There will indeed be some groups who want to come in and talk about exemptions to roomers being included under the Landlord and Tenant Act. I think that is appropriate. Certainly Mr. Jackson, on behalf of the Progressive Conservatives, has a bill which suggests some exemptions. In view of the amount of work that has been done by government task forces on this matter, I think if that material were made available to members of the committee, that would put the issue in a context which would be very easy for us to get ourselves up to speed on.

There are probably only three different approaches to this thing. We would want to be concerned about the home owner who lets one or two rooms. We would want to be concerned about the groups that provide therapeutic environments. Perhaps Landlord and Tenant Act protection in that case is a moot point. Then there is the very specific position that all roomers should be included. I think those views can be canvassed pretty quickly. The groups that want to say what they want to say are identifiable so it probably could be done pretty fast.

1040

Ms. Fish: Could we add the report of the minister's advisory committee and its recommendations to the material that is circulated to the committee members?

Mr. Reville: Sure.

Ms. Fish: I think that would be appropriate.

Mr. Chairman: It would also be helpful to the clerk, Mr. O'Connor, if we could have the information with respect to Bill 42 and Bill 10, indentifying the people you want the clerk to contact. Could the respective caucuses that are promoting those bills or anyone else who has any information with respect to those bills provide it to the clerk. It would be helpful if it could be done relatively quickly.

Mr. Reville: Is today soon enough?

Mr. Chairman: Today is soon enough; certainly tomorrow would be helpful as well.

Mr. O'Connor: I can have the information of a suggested list of deputants comprising about eight or nine to the clerk today. Can the chairman or the clerk advise us of the likelihood of our first meeting.

Clerk of the Committee: We are waiting for the schedule of committees to be tabled.

Mr. Chairman: In the House.

Mr. O'Connor: Does that mean likely next Monday?

Clerk of the Committee: It was supposed to be yesterday; it might be today; it was supposed to be last Thursday.

Mr. O'Connor: If the schedule is tabled today--

Clerk of the Committee: If it is tabled today and if I have lists of people I can start phoning who you know are prepared and ready to go on Monday, we can start on Monday.

Ms. Gigantes: Can I suggest something that might be useful? Perhaps when you have prepared a list, Terry, you can share that list with other members of the committee so that if we have additional people we think should be invited, we can do it.

Clerk of the Committee: Can you give me an idea of the time frame for each group that you want me to suggest to them?

Ms. Gigantes: An hour.

Mr. O'Connor: If Monday is the first day, I think I can have two groups here to make presentations of perhaps 45 minutes to an hour each.

Mr. Reville: Forty-five minutes would be better.

Mr. O'Connor: I think there will be only two. The difficulty with other groups such as the Law Society of Upper Canada and the Canadian Bar Association is they are going to want more time. Their briefs are ready but they are going to have to get people together and organized to be here. Three days is just not enough.

Ms. Fish: I hope we are not looking at a 45-minute presentation and then launching into questions. I hope we will suggest to them that their presentations be 15 or 20 minutes and then we will have an opportunity to question them.

Mr. O'Connor: For practical purposes, I think it is two groups on the first day. I do not know about Tuesday if that is our next day, whether we can have--

Ms. Gigantes: For the committee's consideration, I suspect that on Bill 42 it will be necessary to have presentations that last longer than 15 or 20 minutes. There are some fairly complex matters involved and while we can ask questions and presenters will be free to answer them, it is important to allow the people we are inviting, because we are inviting people in this one, to have enough time to put their cases in enough detail so we understand the problems.

Ms. Fish: I agree. My only concern is that human nature takes hold in some of these matters. If you invite them to present for 15 or 20 minutes, you will probably have half an hour minimum. If you invite them to present for 45 minutes, you are probably looking at an hour. If people can do their briefs in 20 minutes and you have invited them to present for 45 minutes, they are likely to take up the full time. It just seemed to me we could perhaps serve everyone's interest by giving a target presentation time that is a bit less than what we might informally be prepared to consider.

Ms. Gigantes: Good enough.

Mr. Chairman: We will provide you as well with respect to Bill 42--does that apply to Bill 10 as well?

Clerk of the Committee: Yes, I can look for Bill 10 too.

Mr. Chairman: We will provide you with press clippings on both Bill 42 and Bill 10 to bring you up to speed on the issues so that you will have some background on them. That should be ready by Monday. Just so we have an understanding on this, I also heard that the respective caucuses will share with their friends in the other groups any information they have in connection with the groups that are coming before us. That was a request of Ms. Gigantes. Mr. O'Connor just nodded approval. The same works both ways.

Mr. Reville: By all means, if someone has an idea of a group that should be invited, please add it to the list.

Mr. Chairman: Or make sure the clerk gets that information so we can make contact from the clerk's office. If there is nothing further to come before committee, I will ask for a motion of adjournment.

The committee adjourned at 10:45 a.m.

A20N

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PARALEGAL AGENTS ACT

MONDAY, MAY 25, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
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O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. D. R. Cooke
Guindon, L. B. (Cornwall PC) for Mr. Rowe

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From POINTTS Ltd.:
Kouwenhoven, B., Licensee

From the Paralegal Association of Ontario:
Lawrie, B., President; President, POINTTS Ltd.
Poulton, E., Counsel

From the Kingston Township Voters Association:
Taylor, A., Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, May 25, 1987

The committee met at 3:36 p.m. in room 228.

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PARALEGAL AGENTS ACT

Consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

Mr. Chairman: Members of the standing committee on administration of justice, if we could call the meeting to order, there are a couple of quick matters I want to bring to the committee's attention before we get on with the agenda for this afternoon.

You have circulated before you an agenda of the individuals and groups who want to make submissions to the committee with respect to Bill 42. I believe we have clearance from the committee in connection with all of today's agenda, with the exception of one individual whom I want to bring to your attention.

Also, we have scheduled Ontario Paralegal Ltd. for June 1 at 3:30. I just want the concurrence of the committee that we can book that group in at that time. Is that agreed?

Agreed to.

Mr. Chairman: The second matter to come before you is that we have a gentleman, Alan Taylor, with us, who is in the audience at the moment. Mr. Taylor has requested an opportunity to speak. He is the chairman of a Kingston ratepayers group and will be in town today only. He has made his request directly to the clerk.

I have had an opportunity to speak briefly with Ms. Gigantes on this, and she has given her concurrence. With the agreement of the other parties, I will attempt to make some time available to Mr. Taylor, based on the flow of the meeting, if he agrees to remain. We will hear the other groups according to the timetable before you, and then we will work Mr. Taylor in as soon as we possibly can. If that is agreed, we will proceed on that basis.

My understanding is that, because of the short time frame, which is really a problem with respect to the mechanics of this committee, as you can appreciate, the two groups that are coming before us today, POINTTS Ltd. and the Paralegal Association of Ontario, the group to follow, do not have their written submissions available. They will make them available to us, I understand, at a later point, but they will be making a verbal submission to the committee today.

I am sure committee members are aware of the fact that we were in contact with these organizations asking them to come before the committee, so the time frame in which they are appearing before us is really a schedule that we set up, rather than the groups themselves. They are here at our request, and that is the reason why they have not had an opportunity to get their written submissions prepared.

With that very limited amount of explanation, I will call forward the POINTTS Ltd. organization. They can take a seat right in the front, if they would.

POINTTS LTD.

Mr. Kouwenhoven: For the record, my name is Ben Kouwenhoven, and I am representing POINTTS Ltd. For those committee members who do not know what or who POINTTS Ltd. is, POINTTS is an acronym for Provincial Offences Information and Traffic Ticket Services. Naturally, it is brought back to mind because of the demerit point system that the Ministry of Transportation and Communications uses. The acronym stands and speaks for itself.

We have been asked to come here and speak, as we represent one of the largest independent paralegal organizations in the field of traffic ticket work and motor vehicle act work under the provincial offences system. The acronym POINTTS is explained there.

For those members who are not familiar with it, the concept of POINTTS is that we are an organization of ex-police officers. There is no real minimum or maximum time on the police force, but we have done a rough study and we have something like 300-odd years of police experience in our organization, which was developed by one gentleman, Brian Lawrie, the president of the corporation. We have countless years of experience in the provincial offences courts, especially in the Highway Traffic Act field.

The organization was born out of what the Law Society of Upper Canada has been screaming about for years, the concept of assisting people. The Ministry of the Attorney General has agents in court who are called prosecutors and, as police officers, we were always working with them, preparing their cases, etc. As ex-police officers, we were also former agents for the Attorney General's officers, acting in a prosecutor's capacity in many instances. The tribunal system presently in place in many of the tribunal courts is a situation where a police officer acts as his own prosecutor.

We assist the public in minor court, in traffic court and provincial offences court. We are not attacking or usurping lawyers. We are run as a business, and it is a business-like organization. The members of our organization have given up promising careers in the police department to go to assist the public. The law society would have you believe that protection of the public is lost. As ex-police officers and as members of POINTTS, we have spent years protecting this very public which we now serve in a different capacity, but in a manner to which the public is entitled, to have some representation in the minor traffic court system.

Our years of practice or qualifications in this area: We have prepared cases for the prosecutor in these minor provincial offences courts; we have issued provincial offences tickets; we have laid information before justices of the peace; we have prepared the instructions for the prosecutor; we have assisted the prosecutor at a bench, similar to this, in the actual prosecution cross-examination; and we have actually been cross-examined. Our expertise, depending on the time we have spent on the force, seems to be a minimum of 10 years with most of the members of our organization. So we are well-instructed in the actual court procedure.

Protection of the public seems to be the major concern. If you do not mind, I would like to use that phrase continuously throughout my little presentation to you, because it seems to be the point of contention. We have

built-in safeguards in POINTTS to protect this public. First, even as ex-police officers, we think the public deserves a chance to be heard in court and we can be there to assist them, in a minor capacity, as laypersons.

We are incorporated. We consider that a smart business move; we have liability, therefore, in business, etc. The marketplace gives us our demand. As a result--not a direct result perhaps--since January 1, 1987, lawyers have been allowed to advertise. MasterCharge and Visa, I understand, are now quite common in lay legal offices for smaller fees required for legal services, not necessarily paralegal services.

As I indicated, we are ex-police officers; therefore, we had a form of prosecutor-agent status under the police department. A lot of words have been indicated to disparage the concept of franchising, because POINTTS is an organization of some 13 outlets and 17 members across the province. In this case, it is a well-knit group of people. The law society seems to have its organizations of Dial-a-Law and the legal aid plan, of course, which is Ontario-run.

We do have a franchise situation but it is really a concept that we have that we share a responsibility with every other agent in our company across the province. It therefore facilitates anyone who receives a ticket in one particular part of the province to be interviewed and have the file sent on to another area of the province. That is what our franchise means. Also, it is a business sense.

There has been some concern about regulations. We have a franchise agreement that is so stringent that the regulations inside it would keep us, so to speak, on the straight and narrow. We in POINTTS Ltd. are also members of the Paralegal Association of Ontario, a member of which is going to speak to you this afternoon as well. That is a prerequisite as well. We do stick together and we understand that this paralegal thrust is very much in the forefront.

We are also registered with the Ministry of Consumer and Commercial Relations, so there is regulation there through the Ontario Business Corporations Act. There is some regulation in place that already regulates the way we work, the way we operate, our business ethics, our marketing, etc.

Then, of course, we have the natural law of the marketplace, which is exactly why we are here. We are fairly successful in this. The public helps to regulate us as well. Satisfied services and dissatisfied services: that has always been the common law of the marketplace. In the protection of the public, this phrase comes up: "Is the public so stupid that it does not know if it sees a good thing or a good service? If people are using it and it is benefiting them, is the public that unaware?" I do not believe it is. That can be evidenced by the statistics we have in our company. We have strong growth in our company.

Subsection 51(3) of the Provincial Offences Act, under which we work as POINTTS agents in a traffic motor vehicle situation, with insurance laws, etc., provides protection to a citizen in court with an incompetent agent. We are not lawyers, and therefore we have the agent status. If an agent is in court and under the Provincial Offences Act is deemed to be extremely incompetent, he can be told to be removed physically from the court by the presiding justice or judge. However, for a citizen in court with an incompetent lawyer there is no means whereby the judge or justice can remove the lawyer.

That is a built-in regulation and a regulatory body with various statutes itself that assist. I have mentioned the Ministry of Consumer and Commercial Relations, the Business Corporations Act, our own franchise agreements, the Provincial Offences Act itself and various other statutes, either in Ontario or federal, that have the agent status. Again, the protection of the public is constantly mentioned. We believe we are there. We are not hoodwinking the public. We have the agent status.

The Attorney General (Mr. Scott) indicated in the press in one instance that our company gives a Cadillac service at a Chevrolet price. That is what we are attempting to do in this particular company as agents. I have indicated that POINTTS has developed and expanded from a conceptual stage of one man going to court to now 17 agents across the province. The service is so available that it does not die; it just keeps going. There are no consultation fees, for example. I am not advertising our company; I am just indicating that seems to be a turnoff for the public and we do not do that. We determine upon a personal interview whether we can do anything for the person and whether we can actually determine something for him in court or whether we can assist him.

We have given to the citizens in this province an alternative to the high cost of legal representation. There are roughly 1.6 million provincial offences tickets handed out in one given fiscal year, and our company enjoys dealing with 0.01 per cent of that number. That translated over the last three years to just a little under 10,000 clients. Now members of the public have someone in the way and shape of POINTTS Ltd.; someone who can speak on their behalf in court. Most people are terrified of court and intimidated by it. Our practice in the court system as ex-police officers certainly takes that edge of intimidation off.

We continue to maintain the highest degree of integrity and the highest degree of services. We have an internal messenger system service so that these people do not have to travel unnecessarily. We continually hear, "How am I going to get back to Ottawa to file a court date?" "Leave it with us, we will do it for you."

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This is a new industry, and our track record is growth based on success. Again, the law of the marketplace helps to regulate that, and so far, we are glad those restrictions and regulations have not applied to us. The marketplace seems to be there for this type of service for the people of Ontario. Our referrals are constantly going up, and referral business, as all of you know, is some of the strongest business there is.

Because we are incorporated, our business also goes through advertising, which the law profession may now do as well since the advent of January 1. We have been doing that prior to this. It is nice to see in our organization that the referrals from satisfied clients referring other people to us, which is the basis of a real growth, is continually growing. The police have respect for us; the courts seem to have respect for us; and the prosecutors working for the Ministry of the Attorney General have respect for us.

We enjoy a success rate that hovers continually between 78 per cent and 82 per cent of our cases. We use three variables for that measurement: a straight withdrawal, where the crown has no case, either because of want of prosecution or in the absence of an officer or of witnesses; a reduced charge in many cases where there is a severe charge laid; and a straight dismissal after trial, because we do conduct trials, we do cross-examine and we do

summations in court. We are not lawyers, but we do act a lot like them once we get to court in our function as paralegal agents in a traffic ticket court and provincial offences court.

We are striving continually to maintain that relatively high statistic. When we first did enough cases to enable us to have a statistic, we were very shocked and surprised. We thought it was a little high. Since then, we have constantly monitored the situation. As I say, we enjoy the fact that it does fluctuate at that high level. I do not think this is a bad record, and if that concerns protection of the public, if you walk into a POINTTS office and you are left with 18 per cent that could get convicted in court, that is not too bad a statistic and not too bad an odd that you face, especially at a lower price for legal representation.

We share some concerns that the law society naturally had. We try to maintain a very tight ship, a disciplined ship. We do regulate ourselves, in conjunction with the paralegal association. Our concern, which is shared by the law society, is the fly-by-night appearance of some operators that might have arisen in the past. The growth, development and expansion in our last three years--and by the way, this is May 1987 and POINTTS Ltd. has been incorporated this month for three years--show that we are not a fly-by-night operation. We are here to stay. Our expansion from one man in 1984 to 17 today indicates that there is a public need for this.

What does the future hold for us? There were charges by the law society against Brian Lawrie and POINTTS Ltd. I am not Brian Lawrie, as you know. My last name is not Lawrie. That was a one-and-a-half year battle in the courts concerning whether the agent status would be accepted and whether we were actually acting as barristers or solicitors. The appeal was taken to the highest court in this province, and the appeal on behalf of the law society was denied. The law society was the appellant.

Previous to that, there were two other decisions which went adversely to the law society's charges against Brian Lawrie and POINTTS. So it is basically now three to nothing for the independent paralegals versus the law society. We do not say that tongue in cheek. We are just very happy that this has happened. in the words of one of the learned justices in his final decision, and I am using his words directly, "a burgeoning industry of the paralegals."

Our concern in POINTTS is where the paralegal court agents act in court. The appeal also mentioned a very gentle but insistent little criticism the justices had of the law society in not being aware and keeping up to date with the various statutes which limited agents in court and which allowed certain agents in court. The law society was told in a gentle way: "This obviously seems to be the advent of something new. Let us live with it and work with it. You should have been dotting your i's and crossing your t's when it came to finding out where these people were coming from and where they were allowed to act."

Most of the justices--there were three in the last appeal and one prior to that--were very on the point with listing all the statutes where agent status was accepted. It goes back to a common law practice in England. So we have the future of the paralegal industry tied in with the past. As it relates to POINTTS Ltd., it is not a plug we want to continue to do for the company, but we know we are doing a good job out there. The public is being protected.

We have some distinct reservations and hesitancy, not with this particular act but with the role that the law society wishes to play with it.

For those of you who are not familiar, the lawsuit was expensive and almost bankrupted POINTTS. Economically it almost did what it set out to do, which was to kill POINTTS, kill the court agents, kill the Highway Traffic Act court agents. Today this would have affected 17 members. When the lawsuit started it would have affected three, four or five guys. But the fact that there are so many guys and the growth has been so great shows that the public does require this. People recognize the quality, the good service and the success of POINTTS.

Our concern is with the bandwagon syndrome. Because we are apparently the largest traffic ticket agency running in Ontario, and from all our indications in North America at this particular time, independently or organized like this, it is not surprising that we get the quacks, charlatans and usurpers who pass themselves off as lawyers. We contain ourselves to the point that we never mention the word "lawyer" in our office to the point that it ever associates with us. During the trial of POINTTS Ltd. and the law society, many members of the public were asked to speak on behalf of POINTTS, and I believe that in every case--I have not read those transcripts--these people, as members of the public, were well aware that the person going to represent them was not a lawyer and was a paralegal or court agent, an ex-police officer acting in that capacity for them.

We in POINTTS feel that those people who are the fly-by-nighters, the crackpots and the charlatans will self-destruct because they do not run their ships with the same sort of stringent controls that we do and under the regulations we currently adopt, and happily so.

They are also dealt with by the Provincial Offences Act. They can be removed from the courtroom. They can be dealt with by the Law Society Act if they pass themselves off as lawyers. They are also dealt with by their own stupidity and by their lack of knowledge of the particular offences they are dealing with. This hurts the whole industry and this is in essence why we in POINTTS support very much the Paralegal Agents Act, as proposed.

The concern that we in POINTTS Ltd. have with this is the law society. People say, "We are not picking on them." It did pick on us and the court battles have done this. We asked for regulation years ago, some three years ago because the industry is new. We did not get regulation; we got attempted annihilation. I am not trying to be cute with words, but that is what we got. There was constant badgering and attempts to tie us up economically to the point that we would just disappear and go into the woodwork.

We are a little gun-shy when it comes to the experience of an overloaded board or overloaded regulations. As ex-police officers, we have been fraught with overloaded boards, regulations and lawyers and have had our hands tied by certain forms of statutes, government regulations, etc. We do not want to free-wheel. We want the regulations in place, but we do not want them overloaded and overridden with the same law society that tried to put us out of business.

Again, the words "protection of the public" seem to be interchangeable with "protection of the law society" and "protection of the legal profession." For those of you who are lawyers, I apologize. It is nothing personal, but who is the law society and who is the disciplines committee? Every time you take the words "protection of the public" and interchange them with "protection of the legal profession," they seem totally interchangeable. The words seem

interchangeable whenever the law society mentions them and uses them as their call words.

I am belabouring this point just to show you that we are a little gun-shy. We are a little hesitant about this when we start talking about the boards, the benchers and the members in this act. POINTTS has experienced the power and influence and discriminate wielding of this power on the part of the law society, so we are hesitant about this. It was not at a legal level at all; it was at an economic level. They tried to wipe us out.

We wish regulation as well for the independent paralegals to get rid of this lunatic fringe. We do not want any self-serving purpose. "Paralegal" is a term that has been there for many, many years. Law clerks and students are all paralegals when they deal with certain statutes and minor statutes. In their recommendations of October 3, 1986, I believe to this committee, they readily recognized the paralegal. I just do not think they are ready to deal with the independent paralegal and neither are we if that person is a slipshod, very bad variety. We do not want him in our company. We have our own regulations as well.

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We are a young company and a young organization. The justices in the last appeal against Brian Lawrie and POINTTS recognized that it is a burgeoning new industry. Let us keep it as such and let us work together. This is the stand that POINTTS wants to take. It is not an adversarial position against lawyers and the Law Society of Upper Canada. Let us institute this in a symbiotic way. It will be fruitful rather than futile and we really feel that. We are here to stay. Some of these paralegals are here to stay, especially the ones in court. It is heartening to see again and again the people who come to us after court and say: "I am so glad you have done this for me. You have saved me thousands in insurance, etc." It is heartwarming to see. It is the same good news and a pat on the back a lawyer would get after doing a great job in court and we like getting that as well.

The legislators, and that is this committee as a first step and a part to it, cannot ignore this new industry as it exists. Certainly it is in POINTTS. It is a good industry and it is growing all the time. We must forgo the restrictive and constraining grasp certain people would have put on us in this particular case. The Paralegal Agents Act as it stands is good. Perhaps there should be an advisory board, etc. We have to watch the law society and who they want to put in place in this act. That is our concern.

Mr. Chairman: Before you carry on, sir, I have to recognize the clock. There are a number of members who want to address questions to you. I wonder whether you can perhaps wind up your opening address so that we can get to some questions as quickly as possible.

Mr. Kouwenhoven: I certainly will. Thank you very much for reminding me. I just want to mention two things. The competency of the agents, particularly in POINTTS, was never questioned during any of the legal battles. Tomorrow the Law Society of Upper Canada is going to speak to you on the effect that paralegals might have if they are permitted in traffic court only for offences that do not involve jail terms or incarceration. Our experience is that those people who wish that kind of help with the statutes that deal with jail terms are exactly the type of people who are coming into our office.

We are familiar with it because of our status as ex-police officers in this organization.

The number of cases where a jail term under the Highway Traffic Act is imposed is so minimal, it is almost inconsequential. From our particular organization, here is an interesting statistic for you. Of the just under 10,000 people who have been helped, only two people were incarcerated for repeated and consistent offences. It was a drive-while-suspended situation, which is a direct violation of a court order from a judge.

If we allow the law society to change this act so we cannot deal with anything that involves a jail term, that means we will not even be able to assist anybody with parking tags, because a parking tag is under a bylaw as it stands right now and they can go to warrant and they can be liable to a jail term for not paying their parking warrants. Should this act be run by the lawyers, the law society would then accomplish through the legislation what the courts could not do. If they take away that power from us, the legislators and I suppose the law society, would have placed a heavy burden on the board running this act and would have achieved what the courts could not do.

On a personal note, in the 10 years and eight months that I spent in the police department, I can count on my hands the times I saw a lawyer in provincial offences court dealing with the Highway Traffic Act. They never had that as their main interest before. All of a sudden, they seem to want to keep us out of it. At the present moment we are seeing more and more lawyers coming into this domain of the traffic ticket aspect. We have never seen them before and all of a sudden they want us out of there and we are not seeing them increasing in frequency either.

Those are our concerns. We maintain as well that it is protection of public.

Mr. Chairman: Mr. O'Connor, I think it is appropriate you should lead off the questioning since you had your hand up and of course you are the author of the proposed Bill 42, and then Mr. Partington and Ms. Gigantes.

Mr. O'Connor: Mr. Kouwenhoven, I want to welcome you and thank you for being here today and making this presentation to us, particularly because of the very short notice we gave you. To add to the chairman's apology, we organized our schedule in regard to this bill only last week and got on the phone as soon as we could thereafter. You have responded and responded well and we thank you for your comments.

I did have some questions. Protection of the public, as you have belaboured, is what this bill is all about. It is why we are here and I am happy to hear it is also your significant concern in being here. You mentioned in your comments that you in POINTTS are predominantly or perhaps all ex-police officers. I take it all 17 franchisees have police experience.

Mr. Kouwenhoven: That is correct. We have one agent who acts as a double booking agent who was formerly with the Ministry of the Attorney General as a prosecutor.

Mr. O'Connor: Everyone has previous experience in court, knows the Highway Traffic Act and knows the ropes, perhaps not in a defence or prosecutorial stance, but they have been to court frequently and are familiar with the process.

Mr. Kouwenhoven: That is correct.

Mr. O'Connor: You mentioned a franchise agreement that strictly sets out the guidelines as to your procedure and the way you must act on behalf of your clients, I presume. Is that a private document? Would it be possible for you to table a draft, without names or any specific reference to any specific franchisee, with the committee to assist us in the kinds of guidelines that obviously have been very successful for POINTTS in governing itself, shall we say?

This bill, of course, is an attempt to govern the entire spectrum of paralegals including those who go into highway traffic court, but that might be of some assistance to us. If it is not impossible, and you might have to check with your lawyers in that regard, maybe you could outline some of the rules and regulations to which you must adhere in order to be allowed to be POINTTS franchisees that ensure an adequate standard of quality protection for your clients. Could you cover those for us?

Mr. Kouwenhoven: I could but I would have to check to see whether I can. I believe the franchise agreement relates more to business in its particular application rather than that, but I will not hesitate to mention that inside the agreement are certain ways of conducting ourselves as business people under the POINTTS Ltd. name.

You catch me off guard here and I am going by memory but an example is telephone answering methods. That does not seem like a lot but it does mean that when people ask prices and questions and all that stuff, our secretaries are instructed not to give any advice in any legal way, shape or form over the phone. They are asked to come in and speak to an agent, for example, so that there is always a personal contact. It is not just a price over the phone like what the stock is trading at today and that sort of thing.

There is a specific way of setting up our offices, politeness, etc. It is always above board and businesslike to the nth degree. Certain personal financial arrangements I do not think really apply to the actual thing here. Methods of answering telephones, ways of keeping files, methods of conducting correspondence from POINTTS Ltd. and its independent franchisees with the courts, company directives, marketing guidelines: These are the things we constantly adhere to. We adopt a system of general meetings on a very regular basis, almost to the point of once a month.

We do a table talk very similar to this in deciding new problems and new futures with our company and any problems we have. It is constantly being monitored and updated, and we do adhere in a business sense to the franchise agreement and also--

Mr. Chairman: May I ask a supplementary to that? In that review of the material that is passed on within the context of the agreement, do you indicate any limitation on the types of cases you get involved with? I think that is one of the key things this bill is all about and one of the things we are attempting to grapple with. Do you discuss that at all in your relationship with the new guy who is going to come under the name of POINTTS?

Mr. Kouwenhoven: Yes, it is fully understood that we do not deal with any summary conviction matters in provincial court. For example, impaired drivers is an area where an ex-policeman would have a lot of expertise. Provincial judges do not wish to see us there. We will not go into that court. That is very basically understood. Small claims court allows agents. We can

therefore allow our agents and franchisees into small claims. In summary conviction court in the form of theft-unders or shoplifting, again, agent status can be allowed by statute but we choose not to do that.

We have just been--it sounds ridiculous--trying to bend over backwards not to aggravate anyone in this process of ours. We stick to our area of expertise: Provincial Offences Act, Compulsory Automobile Insurance Act, motor vehicle acts that relate to the motor vehicle and the licence and operation insurance. We have limited ourselves to that and we do limit ourselves to that.

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Mr. O'Connor: Dealing with the situation in court, does your franchise agreement require any particular training with regard to the ex-police officers, any particular length of time that they had to have been officers to ensure that they are familiar with the court system, that sort of thing? Is there a process whereby the new franchisee is taken to court and his skills are tested or examined or looked at somehow by the company before he is given his franchise?

Mr. Kouwenhoven: A new franchisee is always taken to court. While the work is very similar in the prosecutorial and defending type work--it is the same courtroom and the same facts apply--cross-examination, etc. is a little bit of a new field for a new franchisee who is an ex-police officer. He is introduced to that. He is introduced to some of the prosecutors, etc. He watches our methods and we learn from one another. We also learn, of course, from the years of experience we have.

As to your question on a particular number of years of police experience, there are no exact criteria but I know that we do not look very deeply into someone who is interested in one of our franchises who has one or two years' experience.

Mr. O'Connor: POINTTS is a responsible organization that ensures and sees to the protection of the public--that phrase again--by drafting a franchise that requires this experience and that takes the time to take the guy to court and see that he knows what he is doing. The problem comes, I suppose, with the rest of those who wish to call themselves paralegals in provincial offences court or small claims court or the other areas of paralegal enterprise that are burgeoning, as the court said. Could you perhaps, and this will be my last question, outline for us some of the horror stories you have observed of paralegals who are not police officers who have appeared in these courts and done a disservice to the public and really made the case for some kind of legislation in this area?

Mr. Kouwenhoven: I have thousands of horror stories concerning that.

Mr. O'Connor: That was a leading question.

Mr. Kouwenhoven: I will pick one out of the hat. I am not trying to be unkind or ridiculous but I have encountered horror stories with young law students as well. That is the sort of thing we want to maintain. How do we prove to you that we maintain that? We know what our success rate is, where our growth is.

Horror stories: There is currently a member of the public hanging around old city hall who passes himself off as an agent and I know he is soliciting right out in the courtroom halls. The clerks of the court, the monitors as

they call them now, are approaching us as POINTTS agents saying, "That guy had better never go with your company because he is completely crazy." I heard him in court this morning. In my opinion, and I am not a medical person, he is on the lunatic fringe that we really do not wish to associate ourselves with. We would never entertain even speaking to a person like that for this type of service for the public. We really would not.

There are also horror stories where legally qualified people are not familiar with a particular provincial offences court or the ramifications of certain dealings. If you wish, we can certainly supply a long list of horror stories. Some are more than amusing but not amusing to the person who had this person representing him. Others are of concern as well.

There are other names of people who have been in this industry before it was ever recognized as such who have horrible reputations that circulate among the court halls and the clerks. There is that concern and we share that concern. We do not align ourselves with these people.

Mr. Partington: Do your agents appear in small claims court now?

Mr. Kouwenhoven: We have had one or two agents who have appeared in small claims court.

Mr. Partington: Do you have any training to equip them to do so or is that something you might plan for the future?

Mr. Kouwenhoven: That is something we plan for the future. In anticipation of more small claims work and expanding our own area of expertise and work, we have had a series of lectures and seminars by a lawyer in this small claims area. Again, I will not hesitate to say that police background and training and the logical setting up of certain things and information readily assists us in small claims court. It is an area of expertise that POINTTS Ltd. has not touched because we wish to specialize and we are specialized in the Highway Traffic Act field. But we do anticipate some growth.

Mr. Partington: What areas would you see yourself going into?

Mr. Kouwenhoven: Perhaps it would be small claims or landlord-and-tenant stuff. Workers' compensation and immigration is not in our area of expertise. Small claims could be. As police officers, we have all dealt with the domestic situation or the contractual situation, the fence line acts. Any act like that would give you a very good idea of contractual law when it comes to fulfilling contracts or not under \$3,000, common practice of course in the small claims court. Again, it is not our area of expertise, we would have to confess. If there is someone who can do that better, then let him handle it. That is fine.

Ms. Gigantes: I would like to follow up on some of the questions that have already been raised and go a little bit further.

What is the limit of your service? You have talked about the fact that under the Highway Traffic Act and the acts under which you normally prepare assistance for people, if you were to rule out all that the Law Society of Upper Canada now proposes you should rule out as a sphere of work, you would be ruling out a lot of your work.

Mr. Kouwenhoven: That is correct.

Ms. Gigantes: What is the limit? Is there a limit?

Mr. Kouwenhoven: Yes, basically, by agent status. Of course, with this whole thing that happened with the law society versus POINTTS Ltd., we are entitled to agent status and as such we practise as agents in the provincial offences court, taking care of any provincial statute. That would be our limit by law.

What our limit is that we choose to do in POINTTS is the Highway Traffic Act, the Compulsory Automobile Insurance Act, the Environmental Protection Act as it relates to motor vehicles, certain bylaws, the Public Transportation and Highway Improvement Act--basically, any act that deals with the public, and this is again the marketplace, Ms. Gigantes, and seems to be concerned with motor vehicles and their insurance at present.

Again, the chairman indicated a question to me concerning where else we do not operate. We do not operate, even though we might by statute, in the summary conviction court, the provincial court.

Ms. Gigantes: Perhaps I could ask the question another way around. They have suggested that in fact you should be limited outside of the field where anybody could be sent to jail. Is there any degree of limitation? What is the maximum jail sentence one could get in the sphere in which you operate?

Mr. Kouwenhoven: The act I am most familiar with is the Highway Traffic Act, and I would suggest that it is a year for driving while suspended. But that would be to such a degree--and I do not know if I gave the stat to you; out of 10,000 people, two of them have been incarcerated for periods of time. They did serve it on the weekends so it was not like their lives and livelihood were taken away. That is in direct contravention of court order suspensions. That is the type of maximums we are looking at.

Those are the charges that are very worrisome to the clients we have. There are some more serious charges: failing to remain, careless driving and driving while your licence is suspended. That is the maximum scope of our work as far as incarceration terms are concerned and will involve anywhere from 50 per cent to 60 per cent of our work.

Were that work to be taken away from us, I would dare say--and I am not being bold here--I would dare say that just because someone is a lawyer does not mean that he could handle that any better. Again, our intimate knowledge of what is required in the prosecution of those particular offences that could result in incarceration--our particular intimate knowledge would assist the person in any event more than a fresh law student coming out of law school and dealing with his first driving while suspended. There are many rules of evidence that the officers have to obey, and we are very familiar with rules of evidence, etc. I am getting into another topic under your question; I am sorry.

Ms. Gigantes: You do not have to talk me into that. Your description of your operation at the franchise is one in which you say that you maintain certain kinds of standards, but the standards you have described seem to me to be more of good corporate business, good corporate citizenship or corporate public relations standards rather than anything that has to do with a professional obligation to the public in the same sense as we know it under professional licensing of doctors, lawyers or other professionals in Ontario.

Mr. Kouwenhoven: That is correct. You must remember, if you will,

please, that the company is only three years old and its rapid growth in the last year in particular has led us just now into the elementary stages of actually planning education committees inside our company, continuing education.

We are entertaining thoughts at present, for example, and it is constantly being done by each individual franchisee agent who does attend our meetings, of bringing new case law, etc., forward; it is Xeroxed, mimeographed and photocopied and passed around among the members of our organization. So we are constantly kept up to date, for example, in the education field in our company.

Other than that, I guess good corporate citizenship does lead to a lot of pride in our company. Certainly, it brings forth a good feeling towards these people coming in.

Ms. Gigantes: If we assume that you are almost perfect corporate citizens and that in fact the level of professionalism we would find upon intense investigation of your operation would be entirely satisfactory to any objective observer, how does one deal with corporations that might seek to operate in the same field which would not meet those standards?

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Mr. Kouwenhoven: I believe that if the Legislature and society recognizes the advent of a paralegal industry, there must be some system put into shape and into being of assessing these people through an examination, a board, etc., educating them, refreshing them, perhaps with the educators, community colleges, continuing education, law school, supplemental courses and that sort of thing. There should be a standard, I agree, and POINTTS is concerned because we wish to help set the standard. Our concern is with those people as well.

The word "franchise" gets to have a very big, dirty name quickly because people think it is a fly-by-night career, the sort of opportunity the pyramids people--

Ms. Gigantes: McDonald's is very stable.

Mr. Kouwenhoven: Yes, it is; that is right. Again, I am not bragging here, but it is just that we like to align ourselves with that kind of image.

Ms. Gigantes: Can I try to pin you down just a little bit more? While you are pleased with the bill in general, it seems to me you are saying you do have concerns about the amount of control the law society will have within the operation of that legislation. Could you be a bit more specific?

Mr. Kouwenhoven: While we are legally trained in certain aspects, there are going to be a lot of things we are not going to be too well versed in, and if one of the paralegal agents, under this whole scope of the Paralegal Agents Act, were to be in front of a discipline committee, facing four benchers and one layperson, I think that is an overwhelming type of situation.

It is very difficult to answer this question very quickly, but we do see it from a business sense combined with professionalism, and we do stress the fact that we would like to see education, examination, qualification and the permitting of it.

But if the law society or lawyers set every standard and eliminate, for example, this jail incarceration statute aspect, we will not have this industry any more, and we do not want to see it overloaded. There are lots of people who are qualified by what they do, and someone's suggestion of two benchers, two paralegals, two laypeople and perhaps one to break the tie sort of thing is an excellent idea, something we would all foster and wish heartily. That is the concern, I think.

Ms. Gigantes: Thank you very much.

Mr. Chairman: I have a couple of quick questions. I am trying perhaps to pursue the same line of questioning as some of the other members.

You have indicated in a response to Ms. Gigantes that, as an example, you would handle a drinking-driving offence where in fact the sentence with respect to the removal of the licence could be a period of one year and there could be some other costs associated with that as well.

Would you then accept a second offence? I am trying to draw some parameters around how far you would go if the individual had been convicted of a first offence. There is an escalating factor dealing with those offences, as you are aware. Automatically now, there is a suspension of the licence for one year on the first offence. Would you then take a second offence?

Mr. Kouwenhoven: Perhaps you misunderstood me. We do not take drinking-driving offences.

Mr. Chairman: Oh, you do not?

Mr. Kouwenhoven: No, sir.

Mr. Chairman: I did not hear that.

My second question is with respect to the line of questioning in regard to some sort of standards or testing procedure for the people who are involved with your organization. You have not quite said this, but I get the inference that all the people associated with you now are police officers who have been trained in the law to the extent that a police officer is.

Mr. Kouwenhoven: That is correct.

Mr. Chairman: Are you then saying that the only people who would be hired or would be considered for franchise purposes by your organization would therefore have to be police officers?

Mr. Kouwenhoven: That is correct. As I indicated as well, the present status is that we have one member who used to be with the Ministry of the Attorney General as a prosecuting agent. She is not a full franchise member but does subcontract work to the point where she is prosecuting the cases the police officers brought to her. She has been involved in the legal system for the last 17 years; again, the type of person a paralegal would be. We considered her and adopted her, not as a full-fledged member or as a franchisee, but we adopted her because of her intimate knowledge of the Highway Traffic Act.

Mr. Chairman: Let me ask a question with regard to someone else who could be in a quasi-legal position. Let us say a legal clerk in a law office decided he wanted to get a franchise from your organization. What would your

response be to someone who had a considerable amount of exposure to the legal profession, but not as a lawyer? As an example, would a legal secretary or someone associated with a law office in a somewhat different capacity qualify in terms of a franchise for your organization?

Mr. Kouwenhoven: As far as the paralegal status under this proposed act is concerned, perhaps they could qualify. They know that POINTTS Ltd. deals with the Highway Traffic Act and traffic-related offences. If they wish to do that, they really should not be coming to our company. We would certainly look at them. We would indicate to them exactly what our parameters are and what area of expertise we deal in. We would advise them that what we are dealing in is the traffic field, the Highway Traffic Act and motor vehicle types of things.

If they wish to be examined by us, that certainly is in place. We have not had any requests by people with court experience. We prefer the person with Highway Traffic Act experience.

Mr. Partington: On the question of hiring only police officers, is there a concern that in so doing you may form a link with police departments where you get referrals directly from police officers by virtue of your experience and your past?

Mr. Kouwenhoven: That has not been experienced by our company at all. We have a very good rapport with them. There is no direct recommending. In our three years, we have experienced that police officers prefer to deal with us. That is natural. We have had no fear of that ourselves. Those are guidelines set down. There is no hanky-panky, no behind-the-back-door scenes or hail the little boys in blue. There has been none of that. It is cautioned against continuously.

Mr. Partington: You are in favour of making that a clear position?

Mr. Kouwenhoven: Yes. Police departments being what they are, once we leave we are no longer police officers. We can still maintain friendships with any policeman, as some of us in this room might do. We certainly do not have the connections and the knowledge of what is going on. We do become sort of persona non grata and that is it. We are one of the guys who left.

Mr. Chairman: Thank you very much. You have been very helpful in providing us with information on your organization and your position with respect to Bill 42. We thank you for coming before us on very short notice.

Mr. Kouwenhoven: Thank you.

Mr. Chairman: We are running a little late. I would like to call the Paralegal Association of Ontario, Brian Lawrie, president, and Eric Poulton, who is counsel to the association.

PARALEGAL ASSOCIATION OF ONTARIO

Mr. Lawrie: Good afternoon, ladies and gentlemen. My name is Brian Lawrie. Seated to my left is Eric Poulton. I am president of the Paralegal Association of Ontario. Mr. Poulton serves in the capacity of counsel to the Paralegal Association of Ontario. I have asked him here today solely for the purpose of answering any questions on the law as it pertains to paralegals. He, in our humble opinion, is the most knowledgeable on the present state of the paralegal industry in Ontario, having taken the POINTTS case through the courts to the Court of Appeal.

The Paralegal Association of Ontario is, quite obviously, composed of paralegals. Until recently, "paralegal" was basically a name given only to law clerks and that type of thing in the United States. It is another one of these terms that did, in fact, cross the border and has been applied here to people who do the more menial and mundane jobs in law firms and in the various courts around the province.

Looking back, we can see that Charles Dickens made much mention of paralegals of his time in the books he wrote. I think particularly of Bob Cratchit and also of Uriah Heep, both paralegals with varying degrees of professionalism. I believe one was an accountant and the other one was in a legal firm.

Paralegals themselves have been around for many years, as long as lawyers. The first lawyer's assistant was in fact a paralegal. What we are here to deal with, and what the Paralegal Association of Ontario deals with, is the new profession, the independent paralegal. He is one who, supposedly, works independently of the law firm and is not a traditional type of paralegal.

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I can give you a brief history of the Paralegal Association of Ontario. I intend to expand upon this in the written submission which will be forthcoming. In view of the time constraints, I shall try to be brief with the actual overview.

The basic association itself was formed in October 1985. At that time it was known as the Independent Paralegal Guild. It was formed as a result of two concerns. One was the regulation of what, as became apparent at the POINTTS trial, was a fairly significant industry--at that time, I think "submarine" industry would best describe it--which was actually functioning and serving the community, but in a low-profile way. We felt we should put something in place to regulate and make uniform this type of service and to get to know exactly the extent of the service as it existed out there.

The secondary consideration in the formation of this Independent Paralegal Guild was to provide a defence mechanism. POINTTS had just gone through a provincial court case with the Law Society of Upper Canada and had won. It was anticipated at that time that there might be a strenuous move put forward by the law society to prosecute paralegals.

The Independent Paralegal Guild existed for some time under that name until the then-chairman was found to be sadly lacking in the area of good moral character. At that time, we decided--actually, it was a mutual decision--that he remove himself from the organization. However, in a rather selfish and immature manner, he refused to turn over the name so it could be carried on for the rest of the membership. This is where the name change came. The members stayed the same, less one, and we became the Paralegal Association of Ontario.

We felt the members had to have some sort of meeting room where they could meet each other, discuss exactly what they were doing, come forward and identify themselves to each other. Everybody knew of somebody who worked in Newmarket and did this or that, but nobody knew exactly who he was or what he was doing. We wanted to identify just who was out there and what they were doing.

Presently, we have 95 to 100 personal and corporate members. We find

that increases fairly rapidly, on a monthly basis, particularly as the POINTTS case progressed. Every time there was a victory in a particular court, there was a corresponding increase in the membership, as though more people felt it safer to come out from these caves or wherever they were--their offices--and present themselves for inspection.

There is a real fear among the paralegals out there when you try to identify them. They are terrified that if they step forward, they are going to be the next one singled out, in this random sort of prosecuting going on by the law society, by laying these private informations. There was one in Ottawa, one in Newmarket, one in Toronto, one down in London, Ontario. There does not seem to be any rhyme or reason to it, even people who are doing different types of work.

It was found there are many areas in which paralegals are working. I have a fair list here, but if I can detail some briefly: they are into the Workers' Compensation Board; they are into the preparation of wills; they do change of names preparation; they do incorporations; they do uncontested divorces, credit counselling, immigration; and, of course, as we heard, they do traffic; they also do separation agreements, marriage agreements and debt consolidation. This type of thing is what they are into.

The one that seems to cause the most concern to the legal profession--quite obviously, as the statistics show, this particular activity represents 25 per cent of the legal profession's business, that is, the real estate business. Of course, when you mention paralegals doing real estate, the eyebrows immediately go up and immediately the risk to the public, because of the amount of money that is being dealt with in these particular matters, is of serious concern to everyone. The paralegal association, of course, is of major concern.

When you examine it closely, though, and you get over the initial shock that a paralegal, not a lawyer, is involved anywhere in real estate, you can see that most conveyancing of houses done in a lawyer's office is done by a qualified legal secretary who is employed for that particular purpose. At that time the law society, or indeed the legal profession, will jump forward and say, "Aha, but he or she is supervised." We maintain that, when people come to that particular job and first sit down, they may present a few of their samples but, as they go on in the work, the supervision finishes. As a professional in any business, whether you are a lawyer or a doctor, once you get confidence in your secretary, you do not supervise any more.

A legal secretary does not function under the supervision of a lawyer, but does function under the protection of a lawyer. The protection is afforded by the errors and omissions insurance which is run by the law society. Provided we take people of that degree of qualification, such as a legal secretary, and provided they meet the criteria, we feel they would be people who would be permitted to be out there and to function independently, provided they took the protection of this errors and omissions insurance with them.

This act, Bill 42, does provide for this particular type of protection to be put in place. In fact, it requires that they have errors and omissions insurance. Given Bill 42, there is absolutely no reason why a secretary could not be independent and contract with any number of law firms which would retain her services. The corresponding reduction in overheads in every lawyer's office can be passed on to the consumer and there can be a saving at that level.

You just contract out the work you have, as opposed to having to have this person on staff and pay her whether she is working or not, and then recover that payment from somewhere else. The paralegals are blamed or credited, depending on which side of the fence you are on, with changing the way the legal profession operates and with constricting the lawyers' business. As I say, we have been called usurpers, we have been called people playing at lawyer and we have been called disrupters.

If we look at it, the real usurper and the real disrupter of the legal profession, if we can call it that, has already passed over the horizon and is in place, that is, the personal computer. Your personal computer is going to allow a person at home to call up any number of these documents, incorporation documents, wills, this type of thing, divorce documents and any variety, along with the instructions for people to be able to complete these themselves.

All the paralegal has done is recognize that this is coming. In a similar manner H & R Block recognizes that, even if you simplify something when you put it on a computer screen with simple instructions, the simplified income tax form is not so simple. It was also seen by the people that it was not simple. This is why, every time at income tax time, H & R Block offices are full to overflowing with people in there with the simple form, paying the simple fee for the simple service. This is why the company is so successful because, no matter how simple you make it, you are going to have some people who are not going to do it or participate in it.

We find our paralegal clients come from four main groups in society. They are from a cross-section of society. When we deal with court work, we find people who are too intimidated or, even with paper work, people who are too intimidated. We find they are too busy, we find they are too lazy and we find them uninterested.

They want this done, but they do not care how it is done or who does it. It needs to be done, so somebody does it. We feel that those people are faced now with the option only of doing it themselves, which is something they obviously do not want to do or cannot do, or else of going to see a lawyer and paying the fees that a lawyer charges.

Some of this stuff is so mundane and so simple that it is just a matter of devoting some time to it. You do not have to be a legal eagle or any other type of thing to be able to complete these forms. It is a mechanical process. Indeed, when the computers take over, everything will be just a "fill in the blank" anyway. We find that many of our clients fear the unknown associated with the lawyers, the unknown such as what is the fee is going to be? What is a disbursement? How much is your hourly rate? How many hours is it going to take you to do this?

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As paralegals functioning in these minor matters, we are able to deal with these matters in such a way that we can give a set fee. I mean, for a corporation document, how long is it going to take you? So you can give a set fee. The same with a will, the same with a traffic ticket, the same with a small claims action. The citizen wants that. In a major court case, you cannot anticipate, but on these simple things, you can give him a simple fee and then he knows whether it is worth it to him to risk that fee or whatever.

As an organization, we have been much maligned, unfairly I feel, by the law society at every turn, to the point of being called charlatans,

fly-by-nights and any other sort of disparaging name that happens to come to mind at a particular time. We note that in the 1986 annual report of the Law Society of Upper Canada, it has had 297 complaints of unauthorized practice. Now, basically, in the context in which it appears, that obviously applies to paralegals. However, what it does not say is where those complaints came from. I can see many lawyers complaining, you know, "A paralegal set up shop next to me and he is running away with my business," this type of thing.

When we go further back into that annual report, of which I have a copy here, we see a figure on page 9, which says, "The society receives about 3,000 complaints a year." It is not even as accurate as 297 complaints, which they talk about as related to paralegals. They talk about 3,000 a year, as though it is an ongoing 3,000 a year level.

Now, when we get into those sorts of proportions, I feel that although the membership of the law society is far greater, it is just the language they use. One figure is very specific because it suits them to be specific and the other one is very general because it is an ongoing thing and it does not seem to go up or down much. We feel that, in a business as unregulated as the paralegal business, 297 complaints--from wherever they come, from lawyers or whatever--considering it is unregulated and there are so many charlatans, I do not think that figure is really so bad.

Another complaint, of course, is that disbarred lawyers are permitted in. This legislation here, Bill 42, accounts for that. In the good, moral character aspects of it, we do not want to be with disbarred lawyers any more than barred lawyers do. It is as distasteful to us, especially in a personal capacity. I spent 15 years putting these guys in jail, so I do not appreciate very much having to stand on the same side of the fence with them.

The law society addresses insurance and says these guys do not have insurance. The bill provides for us to have insurance and, in fact, requires that we have insurance.

In actual fact, we go right through with amendments which we suggest address every concern the law society has. The only concern they do not address, of course, is the share of the economic pie here. If we put the bill over the submission that they made to the Attorney General on October 3, 1986, we find that the bill fits all those concerns, give or take a few, completely. It protects the public, which is the overall concern. The bill protects the public, it protects the paralegal and, basically, it protects the lawyer by demarcating exactly where the areas of work are.

What we, as a paralegal association, say is that it is far too restrictive in its present form, in the areas where paralegals can work. The bill itself permits a paralegal to be an advocate in court but does not permit him to fill out a simple form in an office where he has a book of instructions on how to do it.

It seems to me that these things should be broadened to include the types of areas these paralegals are working in. To define where we feel paralegals should work, we feel that, under the envisaged system, anything that a paralegal would normally prepare, to the point of signature, in a lawyer's office, under supervision or protection, whatever you want to call it, should be permitted to an independent paralegal who can contract with the lawyer.

He can prepare it to the same level and submit it to the lawyer. The

lawyer examines it before he signs it. It is still in a position there where the lawyer supervises. If he contracts with the same person, he would have to read it the first two or three times as he would if he employed a secretary. Then, basically, the paralegal would be protected by his own errors and omissions insurance as the lawyer would be with his.

We feel that whenever we come to the economic argument, which is the only one left if we superimpose the bill or the amended bill on to the law society's submission--the only thing we feel is that if the proper qualifications, the proper regulations and the discipline regulations are in place, then in these minor matters the law of the free marketplace will prevail. Lawyers can still get that business but they would have to compete for it. We all know that in the free marketplace whoever provides the best service at the best price is the one who wins.

As I say, I have some amendments that we feel should be made to the act, but rather than read through the whole act right now these will be included in the submissions that are sent down.

As president of the Paralegal Association of Ontario, I would really like my remarks to be taken in the context in which they are meant, that is, as constructive as opposed to destructive, and nowhere to be construed as demeaning the legal profession at all. There is much respect out there among the paralegal community for lawyers and for the type of work they do. Why else would we be here endeavouring to have the opportunity to have a proper setup for us to participate in the type of work we do? That is my submission.

Mr. O'Connor: Mr. Poulton and Mr. Lawrie, thank you for putting together your brief on such short notice. We appreciate your being able to do that and to assist us in the way you have.

Perhaps I can ask you some brief questions about the association. You indicated that there are approximately 100 members. Can you break that down roughly in terms of the traffic court type of paralegal and perhaps the small claims court, the numbers there, the general headings or categories of types of paralegals you represent?

Mr. Lawrie: The traffic court agents represent about 20 per cent of that 100. The rest do many of the other activities. Some specifically do one of the activities. I do not have an actual physical breakdown. If we have those statistics available, they will be included in the submission.

Mr. O'Connor: In the bulk of your submission you hit on what I think is the overwhelming, fundamental question that faces legislators in dealing with this whole area of paralegals, that is, where do you draw the line? If that question could be answered simply, we would have had a bill long ago and it would be an easy thing to deal with.

Bill 42 deals only with those statutes where people are already allowed to appear in a particular court, at the lower levels generally, while not being a lawyer. In other words, agents are permitted to appear in court and the bill purports to regulate, educate and govern only them. It specifically excludes any of the other categories you have mentioned such as family law matters, drafting of wills and drafting of incorporation of companies.

Several times you used the very innocuous word that everyone uses in this respect, that is, "simple": simple will, simple corporation, simple divorce, uncontested divorce. That is the problem, of course. Who knows what

"simple" means. Where is the line over which it is no longer simple and you should have a lawyer involved? This is what we must grapple with. Does your association meet that problem? Does it define "simple" with any specificity? I suspect it does not. Can you help us in any way with how we meet that problem?

In drafting the bill, I came to that point and decided it was too difficult a problem to meet in a simple, to use that word, first effort and that, therefore, because it could not be overcome, you have to leave that to the lawyers and that perhaps people doing divorces should be lawyers. Perhaps people doing incorporations should be lawyers.

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Mr. Lawrie: We would say that the type of work we would term "simple" is the type where a lawyer would say to his secretary: "Do me up a standard will for Mr. So-and-so. He will be in at three o'clock this afternoon." The secretary knows that what he is talking about is the husband-to-wife-to-children type will. They are not going to be talking about inheritances or any other complications.

Mr. O'Connor: That begs the question, of course. That is not an objective standard that we can put into a piece of legislation or even into the charter of the Paralegal Association of Ontario for definition purposes.

Perhaps I could flip the ball to Mr. Poulton, who is a lawyer and who is your legal adviser, and ask whether he has dealt with that problem and what he might be able to suggest on it.

Mr. Poulton: This is called the demarcation problem. Indeed, it is quite a problem and it is not really simple. With respect, it is very difficult, as you correctly have said. In the case of your bill, it is relatively easy, because it deals with those areas where there is already legislation in place allowing paralegal agents to operate.

In the first place, my own criticism would be that just because that is so and just because, as you say yourself, you have not done a thorough study--and with great respect to you, you did the best with the resources you had, surely--but from a practical point of view, it therefore follows that you should not exclude all those other areas, because you have not even studied those other areas. I strongly urge this part upon you.

As it now stands, the area is really in the area of common law and there is actually very little guidance from the courts on exactly where that demarcation lies. Having read perhaps all the significant cases, I observe that the courts simply have said that is clearly a practice of law, really begging the question of just where the demarcation lies.

Just because it is difficult, and more difficult than the area of demarcating the borderline from the point of view of what court you appear in, as is the case in the Paralegal Agents Act, surely it does not follow that a line cannot be drawn at all. We must look at individual cases, each area of practice. For instance, in the area of real estate, one of the key areas of practice, it is already current that a nonlawyer may do anything but sign letters of requisition and certificates of title. That is already very much an accepted practice. Surely here in this key area, we already have a quite clear demarcation line.

Mr. O'Connor: If I may interrupt, of course in a real estate deal,

you cannot do a deal unless you can do those two things. They are fundamental to the doing of a real estate transaction.

Mr. Poulton: But again, as the practice exists, it is a fact that there are independent title searchers and these operations have existed for 20, 30, 40 years. I am not sure whether you have ever been in a registry office, but it is an act of considerable sophistication.

Mr. O'Connor: As little as possible.

Mr. Poulton: Many lawyers do rely upon the independent title searchers. Leading off from what Mr. Lawrie said, this is already an established area. Surely, if the demarcation line is the signing of requisition letters and the certifying of title, it would follow that an independent paralegal may do anything else. The traditional view has been that the paralegal or the law clerk or the secretary must be in the employ of the lawyer and, therefore, is supervised from the point of view of being under a master-servant relationship.

Why does this traditional view have to prevail? Why cannot we have independent contractors, as we already have to some extent, for example, in the area of real estate? That may be so in other areas as well, such as in the area of incorporations, wills, estates and so on.

While I fully recognize that this is a difficult area, a beginning has already been made. Certain demarcation lines are already generally accepted. These have to be studied and refined and can be stipulated in legislation.

Mr. O'Connor: As you say, we are not going to solve the problem today. I was merely putting the problem as being the primary one in this area.

Thank you. Those are my questions.

Mr. Partington: This is almost in the way of a supplementary to Mr. O'Connor's question. I am not quite sure I agree with you that those two areas of a real estate transaction are the only reasons a lawyer is needed. I submit to you that even in the so-called simple contract, if a client comes to see you before he executes a contract, it is usually the biggest purchase he makes in his life and there is a lot of advice he needs before signing that contract. Much of the so-called standard provisions require interpretation and certainly a lawyer must consider the background of a purchaser before advising him.

I want to point out two more and then suggest how you fit it into a standard transaction. Where mortgages are involved, when they come to the question of the intent of whether it is renewable, whether the interest rate can change, various penalties contained in it, whether it is assumable, you get involved in easements and you wonder whether the easement is extinguished, whether it needs a conveyance to extinguish it, whether it is extinguished by conduct of parties over the time--all of those issues and many more, I submit to you, are those that an agent is not equipped by virtue of education and past experience to deal with.

I am saying the problem comes in then, who decides what is simple and what is not? I think that is what creates the problem and that is where the public needs to be protected, because heaven help the purchaser who comes in after the fact and has a problem. I would just like you to comment on those aspects of real estate and how you would deal with them.

Mr. Lawrie: I can see the concerns. The concerns are obvious. They are very real concerns and they are serious concerns. We do not try to minimize the concerns to the public. But suppose if we look at it in the context of the particular person who wants to make this purchase or has this contract put together and wants to be advised on it and he goes to a lawyer. He has to go to a lawyer. You see, we do not propose that we replace lawyers. First of all, you can never replace the degree and intensity of legal knowledge that a lawyer acquires both at school and also in practice. You can never replace the competent, quick-witted advocate who can argue the facts, who stands in court and faces down sometimes very real, searching questions.

You can never replace that, but what you can replace is the entire staff that surrounds this person, this army of secretaries which is in every office. If we cut down by maybe two or three the staff in every lawyer's office at 390 Bay Street, there would be room for apartments in the place because of the amount of staff that is in there in each lawyer's office. We feel we can do the advising and prepare the documents, and then it could be contracted out to a person who has the ability and skill to actually put the whole thing together. It will be returned to you in its form.

Mr. Partington: How would you deal with the issues that arise on an ongoing basis that require legal opinion from time to time during a transaction; for example, approaching a condition removal date, the expiry of a requisition date or matters like that? I am just wondering how you would handle that by having separate offices rather than having it under one roof. Is that not the reason why it has tended to be--

Mr. Lawrie: I do not know the reason they have it under one roof.

Mr. Partington: One other question, and it just goes with the expansion of the business. Certainly I was brought up to believe that a will may be the most important contract anyone makes because usually it is interpreted after the person dies and you cannot amend it then. The second thing I was told by a long-standing lawyer was, "Don't believe there is anything simple, particularly with respect to wills."

I submit to you that maybe one of the reasons that wills have been drawn by lawyers in the past is because a general expertise is required to look at a situation. I agree with you that there are some standard forms, but usually the lawyer makes the decision as to what is in the will after he talks in detail with the client. I guess there is the concern that if you start using standard-form wills, which you can currently get in a stationery store, how does that serve the public good?

Mr. Lawrie: What the paralegal would do would be--these standard-form wills, which are in fact incomplete legal documents, are available to the public. If a citizen goes into Grand and Toy or Dye and Durham and buys one of these standard-form wills and he has a problem even with filling in the blank-type form, where does he go to have assistance? If he wants--

Mr. Polsinelli: I think the big difference there is that in that particular situation the individual is not relying on any party giving him advice. If he goes to speak to a paralegal, he may walk out thinking he has obtained all the advice that is required in the case of wills. But if you get it at Grand and Toy, you read the instructions; if it is not in the instructions, you do not know. If you go to a paralegal and you ask a question and you get an answer, you may find, in fact, that the answer is incomplete.

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Mr. Lawrie: In the immigrant community, for instance, a lot of people come here and never acquire the necessary skills in the English language--I do not include myself in that, I hope--to be able to read through a set of instructions. Why should they be further disadvantaged by the fact that the only place they can go with that simple will from Grand and Toy is to a lawyer? Why could they not go to a person, say, in the Greek community or the Italian community who is a paralegal in that community, who would complete it according to their instructions, as opposed to taking advice--

Mr. Polsinelli: Travel agents have been doing that for years. Many of them have given their clients wrong, incorrect and incomplete advice in that particular situation. You are saying, why should they be deprived of the opportunity to save \$25 by going to a paralegal? In the situation of wills, wills are one of the lowest-cost things a lawyer would do and one of the most complex things lawyers do. A will, incorrectly done, will not fulfil the testator's intentions. You are not depriving them by telling them they have to go to a lawyer; you are helping them by not having them rely on someone without the qualifications to draw up a will.

Mr. Lawrie: With respect, I would counter that by saying that travel agents sometimes make mistakes and give incorrect advice, but if a person cannot read the instructions, then he is going to complete a will wrongly every time. There has to be some middle ground in there.

Mr. Polsinelli: The thing is, if he cannot read the instructions, he is not going to prepare the will himself, he is not going to pick up the Grand and Toy form. If he wants a will, he is going to go to a lawyer. He will give the lawyer his intentions. The lawyer will then translate his intentions in the form of a will and have him sign it. The individual you are talking about, who does not have a command of the English language, will not pick up a pre-prepared form at Grand and Toy.

Mr. Lawrie: It appears to me the arguments that have been put forward are predicated on the fact that there is going to be an unscrupulous paralegal out there and an incompetent paralegal who does not know his limitations.

Mr. Polsinelli: No, no, not at all.

Mr. Partington, are you through? Can I?--

Mr. Partington: Absolutely, yes. You carry on.

Mr. Chairman: Just before you carry on, Mr. Polsinelli. We have completed Mr. O'Connor. Mr. Partington has given up the floor to you; rather, you have taken over the floor from Mr. Partington.

Mr. Polsinelli: His was really a supplementary, Mr. Chairman.

Mr. Chairman: It is a long supplementary--and then Ms. Gigantes still wants to get on the floor. I would ask you to be as brief as possible, without debating, if possible.

Mr. Polsinelli: It is my turn though, is it not?

Mr. Chairman: It is your turn. Yes, by all means, go ahead, which you have already done.

Mr. Polsinelli: Mr. Lawrie, I did not mean to get into any debate with you as to whether paralegals should be drafting wills. I think Mr. Partington basically hit the nail on the head when he said the problem is defining what is simple and what is not. Mr. O'Connor was talking a bit about real estate: that is an area I have some familiarity with, as I was a conveyancer, title searcher, for eight or nine years in my prior life.

At a certain point, I decided I did not want to do conveyancing any more. I saw all these lawyers walking around the registry office and I thought they knew less than me about real estate, that I would apply to law school and become a lawyer myself, because if they could do it, I surely could. I was accepted into law school and went in with this feeling that I knew everything that had to be known about real estate, or that I had sufficient knowledge of real estate, at least, that I could conduct a deal from beginning to end without the assistance of a lawyer. I think the largest thing I learned at law school was, in fact, how little I knew; that was to my surprise, as a young title searcher and conveyancer going into law school, after about eight or nine years' experience.

So I think it is hard to define what is simple and what is not. That is the crux of the matter. The crux of the matter is defining how much authority paralegals should be given. You mentioned they should be doing everything up to the lawyer's signature, say in the real estate transaction. Then I have questions to raise. Who has carriage of the file? Who interviews the client? Who advises the client? Who does the requisition letter? Who interprets the agreement of purchase and sale that the lawyer brings in, and so on? Who advises the client, as Mr. Partington pointed out, on whether the mortgage that is to be assumed is in compliance with the offer or advises the client on the terms and conditions with respect to the mortgage that has to be given back.

As your legal counsel knows, there has been a number of cases on the question of how interest is calculated. I would venture to say most lawyers do not understand those cases, because I have read them a couple of times and I think I do not understand them.

Those are the types of issues that come across. For example, you mention that a paralegal should be able to do an incorporation. Anybody can do an incorporation; it is the easiest thing in the world. All you have to do is know how to speak English. But that is not what is involved in an incorporation. In an incorporation, the hard part comes in advising your clients as to what should be in a shareholders' agreement or in the shareholders' agreement itself.

Mr. Chairman: Mr. Polsinelli--

Mr. Polsinelli: I would like to ask him to comment on these points, if he can comment on those things. In an incorporation, for example, it is not only the simple act of registering the documents at 555 Yonge Street, but it is also advising your clients on the shareholders' agreement and on the bylaws that have to be prepared afterwards.

Mr. Poulton: If I may answer that, surely lawyers are educated not to handle things they are not capable of handling. We are both lawyers, and we know there are many areas of the law we are quite unfamiliar with and we should simply stay out of those. Why can paralegals not be educated to the same effect? They will be educated, although not to the same extent as lawyers. Why do we need nine years of training, when for many tasks, two or three years will do just as well?

Mr. Polsinelli: I do not take issue with that--

Mr. Poulton: That is the whole point.

Mr. Polsinelli:--except that I have seen, for example in real estate, that paralegals in the real estate field have learned how to switch title by trial and error, but they know nothing about wills, they know nothing about incorporations, they know nothing about family law, whereas a lawyer gets at least a basic education in all those areas and should be able to determine whether or not he is competent to deal in a particular area. What assurance will we have that the paralegals would get enough training so that they will be able to determine whether or not they are competent?

Take me, for example. After nine years of searching titles and doing everything I thought was related to a real estate transaction, I could probably have been licensed under this legislation to practise as a paralegal, but I knew nothing about family law or any of the other areas of law that Mr. O'Connor knows about.

Mr. O'Connor: I know all of them.

Mr. Poulton: The answer is right in the act.

"Subject to the approval of the Lieutenant Governor in Council, the committee may make regulations..."

"(b) for the examination and admission of paralegal agents to practise in Ontario and for the registration of persons so admitted, for the issuing of certificates of registration and prescribing the fees to be paid on examination and registration."

The answer is, they will be educated to a proper level of expertise, and it has been provided for in this bill.

Mr. Lawrie: If I might add to that, the committee, as it is described there, is composed of five paralegals, two benchers and two other people, one from the Ministry of Colleges and Universities, so the law society and the legal profession do in fact have two whistle blowers in there. If they are not being trained to the proper standards, they are going to do something about it.

But what I do find interesting in the whole paralegal issue is that the legal profession, strangely enough, is the only one of the recognized professions that does not have an independent paraprofessional structure. Every other profession does.

Mr. Polsinelli: I am not disputing whether they should have one or not. I think I gave the principle that there should be some structure established. I guess what I wanted to discuss was where the line is drawn. While you may see it a bit more clearly than I do, I think that is where the committee is going to have the greatest amount of problems: in determining at what point does a paralegal's responsibility end and the lawyer's responsibility commence?

Mr. Lawrie: This is going to be the subject of a whole lot more study, but if the time is put into it and the input is forthcoming, I feel there can be fairly accurate lines of demarcation.

I think the most important aspect of it and the one that is going to be

greatest assistance is to ensure that the paralegals who are operating out there are in fact competent, ethical people. If they are competent, ethical people, then I do not think the problem will arise, and if it does, it will be minimized.

1710

Mr. Poulton: As it now stands, the line is drawn on a case-by-case basis in the courts. That is the way it is now. I think there is a lot wrong with that, but it is better, in my submission, than drawing the line right in this act and saying that anyone outside this act should not be permitted to operate, especially in view of the fact you have not done the study.

It would be best to have it all in legislative form, but it is very difficult and will take more study. I suggest that you at least leave it the way it is now, that it is done on a case-by-case basis, that is to say, any areas not covered by this act.

Mr. Polsinelli: You are not supporting the act. You are not supporting Bill 42. Is that what you are telling us?

Mr. Lawrie: We, as an association, do support Bill 42.

Mr. Polsinelli: I am sorry, Mr. Chairman, but this is--

Mr. Lawrie: In principle, we support Bill 42. We support the imposition of regulations, discipline committees and enforceability over an industry which nobody now has any control over.

Mr. Polsinelli: I am having trouble understanding this, because you cannot on the one hand say, "We want paralegals licensed and we want an independent association to govern them," and on the other hand say, "You can have paralegals working outside that association." I do not think it is going to work.

Mr. Lawrie: That is not what we are saying.

Mr. Polsinelli: That is what I just heard now. Perhaps I misinterpreted it. Either they are regulated and licensed, or they are not.

Ms. Gigantes: If I could interject, what about accountancy as it is practised in Ontario?

Interjection.

Ms. Gigantes: Of course, there is an act, but we also have people who fill out tax forms for other people and get paid for that service and perform what you would call a para-accountancy service. There is no regulation of that.

Mr. Poulton: That is right.

Mr. Polsinelli: So you are talking about paralegals and para-paralegals.

Ms. Gigantes: Come up with another word if you do not like it.

Mr. Polsinelli: I do not think so.

Mr. Chairman: May we close off with Mr. Polsinelli?

Mr. Polsinelli: I am finished, Mr. Chairman.

Mr. Chairman: You certainly are. I would like to move on to Ms. Gigantes, if I may please.

Ms. Gigantes: May I give you one thought which has recurred in the two submissions we have heard? It is the suggestion that people who now perform paralegal services within a corporate structure in a law firm do not need to be there, in a sense. A lawyer can act with contracted services in many areas, a title search or whatever kind of services are required for a legal service that is not specifically something that has to be provided by somebody with legal training.

I am curious about what you consider the market to be. The market fascinates me. I wonder why it is that a lawyer would find it cheaper to hire an ex-policeman to do that kind of accessory service than to hire a legal secretary.

Mr. Lawrie: With regard why a lawyer may consider referring a valued client to a former policeman in the POINTTS organization as opposed to doing it himself is that a lawyer may have a volume. He may be a real estate lawyer or he may perform a function someplace else where he specializes in a different area of law. In a strictly business sense, if he sent that client to some other lawyer, who dealt with traffic matters, what is to prevent that valued client from taking all his business to that lawyer? Here, he does not run the risk of that kind of thing any more. He can refer a client to a former policeman to go into traffic court, and all that is dealt with is the traffic ticket. Then the lawyer-client relationship continues as normal.

Mr. Polsinelli: You just contradicted yourself. You said earlier that your association has a tremendous respect for lawyers, and now you just called them unscrupulous.

Mr. Lawrie: I did not.

Ms. Gigantes: No.

Mr. Lawrie: I did not even imply--

Mr. Polsinelli: You are saying they do not refer their work because they would lose their clients.

Mr. Lawrie: Lawyers are business people, the same as any other business people. If the lawyer would have to spend an inordinate amount of time going through traffic books because he had never been in before in order to best service that client, why would he not refer him to an organization such as mine? Indeed, we get many referrals. It is nothing to imply unscrupulousness. In fact, I think the reverse is true of a lawyer in that particular case.

Ms. Gigantes: What you are suggesting is a degree of specialization within a very broad thing that we could call legal practice.

Mr. Poulton: Precisely, as we already have in the engineering profession. We have engineering technologists and we have full-fledged engineers. With respect, you mentioned beforehand the accountancy area. We

have bookkeepers and accounting clerks, various gradations until the chartered accountant. Surely, there are many demarcation problems but they are somehow solved. Look at the medical area. We have this myriad of specialties.

Ms. Gigantes: They are not solved at all. There are continuous battles.

Mr. Poulton: It works. There will be battles here too, but just because there are problems does not mean we should not look at the advantages of this kind of demarcation, which has already occurred in many other professions. Look at the medical field. Law is a much broader field in many ways than medicine, yet in medicine we have all these specialties and we have none, as yet, formally recognized.

Ms. Gigantes: If we continue along that line of thought, what is it precisely you would like to see changed in Bill 42? Bill 42 sets out specific areas in which paralegals, certified as paralegals, would provide services to the public and charge a fee. Can you suggest a way you would like to approach the broadening, within a legal framework, of those service areas?

Mr. Poulton: Mr. O'Connor has already hit the nail on the head when he opened with his historical account of what happened. That of course is what happened. He heard about the Lawrie case. He saw that here we already have an area that is clearly demarcated; that is to say, under the Provincial Offences Statute Law Amendment Act that permits agents, the Landlord and Tenant Act, the Statutory Powers Procedure Act and other such acts. We will licence this area.

He faced the problem I am presently outlining: What about the demarcation problem in these other areas? He found it far more difficult, as indeed it is, because there is no legislation in existence as yet. With his limited resources, he came up with this bill, which is a fine job for this area. There is not much we find fault with in it and there is much to be said for it.

Ms. Gigantes: What you would like to see is that structure broadened.

Mr. Poulton: Broadened; precisely. I am saying the demarcation line can be drawn and I have already given one example in the case of real estate. Some of you may disagree and very justly so. I am sure we will never completely agree. When it comes to the application, there will be problems. Where does the borderline lie in practice? Just because there are these problems should not mean that we should overlook the advantages of so demarcating.

Ms. Gigantes: But under, for example, the rules that govern accountancy at various levels in this province, there is precisely the kind of demarcation that is provided in Mr. O'Connor's bill, where you say some things shall be done under this kind of licence and other things shall not. That has been the traditional way of doing it in Ontario and it has been the traditional fighting ground in Ontario.

Mr. Poulton: We basically support that very idea of doing it, only we are saying that before you shut the door to these other areas, see what can be done. Where, for instance, does this bill leave the ordinary title searching firm that has been established for decades in Ontario? It is arguable that it is illegal and surely that is a most undesirable result.

Mr. Polsinelli: That is one of the flaws in this bill.

Mr. Poulton: Yes, and it is a serious flaw. The reason it contains this flaw is that Mr. O'Connor did not have sufficient resources to study all these other areas.

Ms. Gigantes: Do you think all these other areas need to be studied or do you think the application of the structure proposed in the bill to any area of legal practice would do the job? That is a very different approach from the approach that has been taken, for example, in accountancy, where you say, "This work, up to and including"--what is it they call it?--"public accountancy can be done by general accountants, but only certified accountants can do public accountancy." I said that wrong, but they have clearly demarcated the kind of work. What you are saying, if I understand you, is, "Do not try to demarcate the subject areas but leave the structure to operate in a free flow."

1720

Mr. Poulton: No, I am saying the opposite. Demarcate the subject areas. In this bill, we already have demarcated one subject area, namely the area of court agents, who are permitted to act in certain kinds of proceedings. Adopt the same kind of structure to these other areas as well. The demarcation line has not been drawn in this bill because the bill does not address itself to these other areas.

I am saying that the basic structure of the bill is sound, but just because it is far easier with paralegal agents is not a reason for shutting off all these other areas such as real estate, wills, estates, corporations, family law and so on and so forth. A demarcation line can and ought to be drawn in these other areas also and the same structure of bill ought to apply to these other areas as well.

Mr. Chairman: I have a supplementary from Mr. Partington and then back to Ms. Gigantes.

Mr. Partington: I will pass my supplementary on to Mr. O'Connor because he has the same point.

Ms. Gigantes: Can I just ask one so that I understand clearly and then I would be quite happy to hand over the floor? Essentially, what you are saying is that if an agent can appear in court and it does not matter what the subject matter of the work is, that should be the test.

Mr. Poulton: Basically, the way the system exists now is that the Legislature has seen that there are certain areas of the law that are thought to be not so sophisticated, to require a lesser level of skill. Also, usually less is at stake for the client, such as proceedings in the small claims court, as if the very word "small" indicates the provincial offences courts--

Ms. Gigantes: Landlord and tenant.

Mr. Poulton: --landlord and tenant and so on. It is thought these are areas where a nonlawyer may well develop sufficient expertise.

Ms. Gigantes: It is written in our legislation.

Mr. Poulton: That is written right in the legislation. It is not so

clearly demarcated in a legislative fashion in the area of real estate, estates and these other areas.

Ms. Gigantes: It is not demarcated at all.

Mr. Poulton: But it is in fact being demarcated by the courts on a case-by-case basis, a procedure that is most undesirable because we never know where we stand until the case is decided. I am saying, why should we not also demarcate those other areas? It has already been done for us in the case of court agents. That is what makes the bill readily passable, but let us attempt to do it also in those other areas. It can be done. There has only to be a will to do it. It is surely not impossible.

Mr. O'Connor: If I may reply to Mr. Polsinelli's point, simply because these other areas are not indicated or included in the bill does not mean they are made illegal by the bill. They would be left in the same status as they are now and that is, as Mr. Poulton says, dealt with on a case-by-case basis by the courts. It is a totally unsatisfactory approach. We should attempt to draw lines of demarcation for them.

As has been pointed out, I did not have the resources or the backup research staff to do the studies necessary to determine where those lines should be. Therefore, I thought we should start with what we can deal with. If in the course of your written presentation, I say to the paralegal association, you can assist us with some guidelines, with some progress in the demarcation problem, we would certainly welcome that, and of course this bill is open to amendment in clause-by-clause to include some of those other areas if we can, because they are not being dealt with satisfactorily now.

As we know, just one for instance, in the uncontested divorce area, people selling kits are paralegals, I suppose. Some have crossed the line and have practised law and been prosecuted and some have not, but we would really like some guidelines as to what is involved in the practice of law in that area at least and the others that have been mentioned too.

Mr. Poulton: Here, for instance, is just one form of demarcation that already is a current one. Uncontested divorce is all right for paralegals. Contested divorces are not all right for paralegals. I know that leaves the question open of when is a divorce uncontested and certainly sometimes uncontested divorces become contested. That is all true but it is one line of demarcation that is current and is already being followed and could be incorporated in the bill.

Mr. Polsinelli: Perhaps I am misreading the bill but in subsection 8(2) it says, "A registered paralegal agent shall not act...in respect of a matter that is not provided for by this act...." Does that mean that if a person is not registered as a paralegal agent, he could do anything he would be legally authorized to do except for--

Mr. O'Connor: Under the Barristers Act and the Solicitors Act, yes, but if he wanted to do anything set out in subsection 8(1), he would have to be registered or he would be prohibited from doing so. Subsection 8(1) covers all the lower courts system.

Mr. Chairman: I think you gentlemen will have an opportunity to pursue this in some further detail. I have one last question from Mr. Partington.

Mr. Partington: I have just one point of clarification. Generally speaking, lawyers retain title searchers to do work that would not be prohibited by that bill anyway. I assume now that title searchers would not be prohibited from abstracting title for anybody. They just would not be able to give a legal opinion on what is in that title, nor should they be able to.

Mr. Lawrie: I agree.

Mr. Chairman: I know we could go on at some length to pursue some of these questions in more depth but time is somewhat of a problem. We have agreed as well to hear from Mr. Taylor before we conclude our discussions today. Thank you very much for coming before us on very short notice.

Mr. Chairman: I would like to call forward A. Taylor. Mr. Taylor has indicated he wishes an opportunity to speak to the committee and represents the consumers' position with respect to the proposed bill. Mr. Taylor, we welcome you and whenever you are ready, you can proceed.

KINGSTON TOWNSHIP VOTERS ASSOCIATION

Mr. Taylor: I am here because we feel Bill 42 is extremely important. In point of fact, it appears to us to repeal a lot of the protections that were in Chief Justice McRuer's 1968 report and that were put into the Statutory Powers Procedure Act to protect from governmental encroachments.

We feel it is premature at this point. There has been some mention before you of the POINTTS case, but the POINTTS case dealt with only one out of three potential offences under practice of law. The other two are currently in court and are coming to trial in about three weeks. We also have the Zuber committee that is examining these. I also feel that the point made by Mr. Lawrie about computers has some validity. I know there are horror stories, but horror stories are like hard cases and hard cases have traditionally been known to make bad law. Mr. O'Connor mentioned to me earlier that it has been understood to have been inadequately studied, but I worry and we worry about the fact that there has been little consideration to seeking what the users of these services have been.

The association itself was formed in 1974 to provide a unified voice for the township inhabitants. It has been particularly concerned with obtaining water supplies, in which it has been only partially successful. In 1986 and in 1987, hundreds of its members, and I have their signatures here, have successfully used agents as defined in the tribunals--the discussion here has been with regard to courts but in the explanatory note it makes it quite clear that this covers other prescribed courts and tribunals--to protect their interests. They now have entered into small claims courts for the same function. I have with me the decisions of the tribunal before the small claims court if anyone wishes to see them.

I have been asked by the executive committee to put three points regarding Bill 42 as it stands and to suggest some alternative courses of action to solve the problems that we see it apparently addressing.

The first point I have already made. It effectively restricts and destroys the rights of consumers to fight unlawful taxes, in which they have particular interest, under statutory powers and other things of this nature.

There is no demonstrated public interest need as Ontario's laws--I

particularly refer to the Business Practices Act--provide for civil or criminal penalties for abusive trade practices. Also, I would draw to your attention, on page 15 of Judge Silverman's judgement in the Brunet case, the definition that, "The principal is entitled to expect that his agent will carry out personally the business he has undertaken, use ordinary care and skill in doing so, using judgement and discretion honestly and in the interest of the principal," etc.

1730

There is already a mass of law protecting the users of agent services. Bill 42--perhaps this is a technicality but it is one they noticed--does not include rule 12.5, disclosure of interest. Because of that and because of the known and public antagonism that at the moment is separating some parts of the legal profession and some parts of the paralegal group, which has been before you today, we feel that its timing, unless much more greatly studied will reduce public respect for the administration of justice.

In my written submission, I go through this in a little more detail. I particularly notice there is no evidence we know of that there has been uncontrollable past abuse. As far as the statutory powers procedure tribunals are concerned, there is a committee that has been set up, the Statutory Powers Procedure Rules Committee. One of its duties is to report annually.

I have looked at every report I can obtain and I cannot find any reported abuse of the system. The tribunals are given power to protect the consumer; if the agent is not respecting him, he may be removed. That and the Business Practices Act--to us, the access seems that at this stage, until there is a showing of what the abuses are you are addressing, then this is too drastic and draconian a method in that it totally forbids other people from acting before these tribunals and before these courts.

When the second reading of this bill took place nearly a year ago, the law society was not anything like as well-known to our members and to the general public at large as it is today, and I think that is important. Because of the aggressive positions taken by the law society and, as far as I can read, the one they are currently taking in the Brunet case, it may well be that when the Ontario Municipal Board invited me to be an agent, it was inviting me to enter into criminal activity. Because of this, I think this committee in particular must go very gently.

I think it should be recognized as a consumer bill, one that restricts our choice. It is noticeable that in the law and particularly the small claims court, the quantitative matters are taken into account as well as the qualitative matters. I have heard here discussion with regard to dividing off the areas of law. That is certainly valid. But there is also the question that if a matter is only worth two hours of a lawyer's time and takes up four hours of a lawyer's time, it may be impractical and may be a barrier to the administration of justice.

So much for the negative. On the positive: legislatively, we can see one potential approach equivalent to what you have mentioned on a couple of occasions: the certified general accountants act and the chartered accountants act. The certified general accountants act provides for a set of initials--a designation--to be given to certain people and to be restricted to those people. It does not, however, stop other people from practising if they are appropriately licensed. We have done this in my own profession, which is computers. We have been through the bad throes of bringing in a profession.

It may well be that some paralegals want to be disciplined by the law society, and I think that would be a very good recommendation for them. They could have something like LSDP, or "law society disciplined paralegal," which would give them that virtue without taking away the rights of others.

Nonlegislatively, a method might be to follow the example of the Canadian Information Processing Society and set up an institute for the certification of paralegals similar to the 15 society-sponsored institutes for the certification of computer professionals. These were set up in 1973 to provide for general certification examinations. We use CDP, which is why I put it after my name, to bring it out. A certified paralegal could be a CPL.

The important point in that particular history is that to start with, the members who were being certified, the CDPs, had no position in their certification. They had to earn it. We started being certified in 1961. The societies joined together and allowed us one position in 1973. It was not until 10 years later that we took anything like even a really major role. The Canadian Information Processing Society is still in a supervisory role. That is another model that you can watch over the past 25 years of how a profession has addressed these problems that you are now facing with regard to the paralegals.

Procedurally, the committee could recognize that Bill 42--and I address Bill 42 as I am reading it and not really a lot of the discussion that is clearly underneath it and is somewhat separate. Bill 42 is to keep KTV members--it is one that restricts the consuming public's freedom of choice, one in which they are perceived to have an interest; that there is no apparent interest and they should consider pushing it over to some other part of the legislation dealing with consumers.

I ask you to understand and appreciate that our feelings are that it restricts the right of KTV members, which we have found absolutely essential and are using. We feel it is inadequately studied. We have found, as far as we can see, no transitional situation. If it passed today, we would have half a dozen cases on our hands suddenly left in midstream, cut off. We think there needs to be more study, a lot more study before such a bill comes in.

1740

We are perhaps unusual in that we have a large number of situations and a large number of people involved, all within a very short distance, all within a very understandable point--unauthorized taxation, lack of water, lack of sewers, etc.--and we would ask that rather than pushing this bill through in its present form, you would first meet with some of our members.

Apologies for the scruffiness of the presentation, but we feel we have to oppose Bill 42 straightforwardly.

Mr. Chairman: Thank you very much. Any questions from members of the committee?

Mr. O'Connor: Thank you again, sir, for coming to us with a lengthy presentation on such short notice. We do apologize to you, as I have to the other groups that have appeared before us today.

By way of a brief explanation rather than a question, there may be some misunderstanding as to the thrust and purport of Bill 42. You seem to have some concern that passage of the bill would limit the rights of your members

in some way to be property representatives in their efforts before the small claims court and other tribunals down in Kingston.

I might point out that, first of all, by definition, any of them could appear on their own behalf, or one of them could appear on behalf of a number of them, without a fee. They would not therefore, without fee, fall under the definition of a paralegal agent.

However, I assume you have hired agents and have paid them and they are appearing on your behalf. Obviously, they have been quite successful, in that you have had 212 individual members, and as you point out, their cases have been largely well done. The agents you have hired seem to know what they are doing.

That is not the type of person this bill has any intention of restricting. In fact, under clause 3(1)(b), there would be provision for the governing body to grandfather, so to speak, competent, practising paralegals who are existing in the field, in whatever court system. They would, of course, be subject to an examination, but conceivably, if they know their stuff, and it sounds like the people who represent you do so, they would not be required to attend the two- or three-year community college course to become properly educated before they could be certified. That is one of the intentions of clause 3(1)(b), that powers be given to that board.

I think you are unduly concerned that we will be restricting anybody in this regard. Sure, the small claims court system has worked for many years without this kind of regulation. What we are concerned with, though, is that because of the burgeoning nature of the paralegal business in Ontario, because of the number of people who are seeing that it is an attractive way of earning a living, they are jumping into it, some of them, as you have heard today, with very little education, very little background, with no certification, and in fact they are doing a disservice to the public and there is a great potential in the future for further, significant disservice to the public. We want to stop that.

I think your situation would not be affected in any way. I would say there would be the inconvenience of your agents, who seem to be quite qualified, getting themselves certified by the board, but that sounds as if it would be a simple thing.

Mr. Taylor: I am afraid I have left a misunderstanding. The situation was that the association applied to the Ontario Municipal Board and was disqualified, and as its chairman, I have been and I am the agent in small claims court.

Mr. O'Connor: Are you paid for that?

Mr. Taylor: No.

Mr. O'Connor: Then you could continue to do so. You would not be affected by the bill at all.

Mr. Taylor: I do not see that under the Court of Appeals' POINTTS judgement.

Mr. O'Connor: Read the definition of paralegal agent. It "means a person, other than a member or a student member of the Law Society of Upper Canada...who acts or holds himself or herself out as acting, on behalf of

another person for a fee...." So if you are not being paid--you can do it on a gratis basis.

Mr. Taylor: Yes, but on the other hand, does he "practise," "hold himself out," or "shall practise as a paralegal agent"? Also, we have already put in some years. I am not prepared to say that we would not wish to pay people.

The situation is that there is no class action in Ontario. We are faced with potentially hundreds of many different situations. I think there is this whole question of practising as a paralegal agent that you have built into this, which is the exact type of words which I feel were brought out as having very indefinite meaning in the POINTTS case. My feeling is that I would probably have to withdraw.

Mr. O'Connor: Okay. Those are my questions.

Mr. Chairman: Any further questions?

Ms. Gigantes: I think the point is well made.

Mr. Chairman: Thank you very much, Mr. Taylor. We appreciate your submissions before the committee and for bringing your views to our attention.

Members of the committee, if there is no further business to come before us at this time, we will adjourn on motion of Mr. Ward until following routine proceedings of the House tomorrow afternoon. We will have two delegations before us tomorrow, the Canadian Bar Association and the county bar association, and I understand the order is being inverted so that the second will, in fact, be first.

Ms. Gigantes: We call that "reversed" in the Ottawa Valley.

Mr. Chairman: That is an inversion. An inversion means the bottom goes to the top and the top goes to the bottom. We are adjourned.

The committee adjourned at 5:46 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PARALEGAL AGENTS ACT
TUESDAY, MAY 26, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Ward, C. C. (Wentworth North L)

Substitutions:

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South, L. (Frontenac-Addington L) for Mr. Polsinelli

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the County and District Law Presidents' Association:
Mossip, N. M., Chairman, Paralegal Committee

From the Canadian Bar Association--Ontario:
Cameron, S., President
Mossman, M. J., Chairperson, Paralegals Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, May 26, 1987

The committee met at 3:38 p.m. in room 228.

PARALEGAL AGENTS ACT
(continued)

Consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

Mr. Chairman: Members of the committee, I recognize a quorum. Other members are perhaps tied up in the House at the moment and should be joining us shortly. I have one small matter of business before we bring our first delegation forward. It is in connection with next Monday's hearings. We have already circulated an agenda that indicates a delegation at 3:30 p.m. and another at 4:15 p.m. Subsequent to the establishing of that agenda, we received a request from Dr. Aileene Williams who is involved in paralegal work specifically related to immigration. With the concurrence of the committee members, I would like to schedule that individual, Dr. Williams, for five o'clock on Monday, June 1. Is that agreed?

Agreed to.

Mr. Chairman: The first delegation to come before us for the Tuesday agenda is the County and District Law Presidents' Association with Nancy M. Mossip. I would like to call that delegation forward now. Please take a seat right at the front, if you will.

Let me welcome you to our committee deliberations. I would also like to thank you for coming before us on what is obviously very short notice. I recognize that we got into these hearings rather quickly and it is very kind and considerate of you to agree to come before us and give us your views on this troublesome question that we are trying to get a better handle on in the committee. Your input will be of some value to the members of the committee. I thank you for coming before us. Whenever you are ready, you can proceed with your comments.

COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

Ms. Mossip: The committee members have a written submission that I am going to walk through with you briefly to highlight some of the points that our association wishes to make with respect to Bill 42. Then I am going to leave it open to any questions you might have.

The first two pages of the submission basically give you a background of what the County and District Law Presidents' Association is. There are approximately 47 local associations throughout Ontario and that is what the County and District Law Presidents' Association represents. In that association there are many committees and the paralegal committee was formed in the late spring of last year.

As chairman of that committee, I had the opportunity to attend Canadian Bar Association--Ontario meetings looking at Bill 42 and also the unauthorized

practice committee of the Law Society of Upper Canada. Mary Jane Mossman who has chaired the CBA-O committee, Shaun Devlin, the staff lawyer at the law society and Clayton Ruby, the bencher, were very helpful to the presidents in helping them make sure they had the material they needed to make an informed decision to the extent that we were able to last fall.

The paralegal committee met in October of last year and we presented a resolution to the association as a whole. It is reproduced on page 3 of your brief. I think what my brief has done is to elaborate on that resolution. Those are your guidelines as to the association's position on this issue. They are numbered one to five. I do not need to read them. You can read them at your leisure. You can see that the association is at this time not supporting the passage of Bill 42. Specifically, item 4 asks that some sort of task force be set up to look at the whole issue of unauthorized practice of the delivery of legal services in Ontario.

Starting on page 4, I have tried to present to the committee some of the problems we see with Bill 42. You will see at the bottom of page 4 that we basically have two problems with the bill and both of them were dealt with quite extensively and very well by the CBA-O committee.

The first is that in its drafting it is too narrow in its scope and at the same time has the potential to be too broad. Page 5 deals with how that is a problem and of grave concern to the committee. What we are concerned about is the extension of work that paralegal agents can be authorized to carry out by regulation. We state that this is of concern to us because it is too important an area in the committee's opinion to be left to regulatory decisions.

We are supporting the CBA-O position on it which states that it is possible to create "a new profession of 'law jobs' without public debate and scrutiny of standards of competence, level of fees and communication to the public of the demarcation lines between lawyers and paralegals." That is taken right out of the CBA-O report. The committee believes this is a major flaw with Bill 42 and is an indication of the prematurity of this legislation. It is dangerous to delegate the determination of what law jobs paralegals should carry out when there has been no study to set out guidelines to assist in making these decisions.

The second major concern we have with Bill 42 is the issue of who will regulate paralegal agents. Bill 42 itself provides, as you are well aware, that they will be regulated by a committee of the Law Society of Upper Canada. The submission drafted by the law society, which you will hear about later, has suggested that the regulations should be subject to control by the Ministry of Consumer and Commercial Relations.

The CBA-O has indicated that there are problems with both these approaches and has also raised the issue of an independent regulatory agency that might make the paralegals self-regulating. The committee is concerned that if paralegal agents were self-governing, we would be creating in Ontario a new profession of quasi-lawyers or legal assistants. These new professionals would be given a degree of legitimacy because of their self-regulation that may not be in the public interest because of the lack of control those traditionally involved in legal services, such as the law society, would have over this group.

The committee is also very concerned about the concept of bridging, whereby a paralegal could, with extra training and upgrading, be admitted to

the bar of Ontario. We see this as a natural adjunct of creating a new profession of paralegals. This concept was looked at actually in the Report of the Professional Organizations Committee in 1980, which I am sure you have all seen. At the time, that committee said this might not be such a bad idea and it was certainly something it could envision.

We are quite concerned about that issue and, therefore, with our two concerns around Bill 42, we support the conclusion of the CBA-O committee that "The choice of a regulatory agency is a very important one, and one deserving careful scrutiny." The CBA-O goes on to say that "The issue is one that deserves further analysis," and we wholeheartedly support that.

We looked at the submission of the Law Society of Upper Canada which did a copious analysis of the type of work done by unsupervised paralegals and what harm there could be to the public. They then tried to determine, based on potential harm to the public, what law jobs they thought might be able to be delegated to unsupervised paralegals.

Our committee accepts the findings of the law society with respect to the problems, and many of our members are aware in their own local areas of problems with the use of unsupervised paralegals completing legal services for the public. It should be noted at this time that our committee has no objection to the use of paralegals working under the supervision of lawyers. The references in this brief to unsupervised paralegals refers strictly to those persons who deliver legal services and who are unsupervised by lawyers.

At this stage, our committee cannot support the demarcation of law jobs that the Law Society of Upper Canada has carved out for unsupervised paralegals in its submission. The committee agrees with the comments made by the law society regarding the harm done to the public in those areas where it is not recommended that unsupervised paralegals be allowed to deliver legal services.

The committee is particularly concerned with the rapidly increasing use of unsupervised paralegals who are business people and who have the potential of exploiting the public for monetary purposes and not providing acceptable legal services. The problem with the proliferation of private businesses providing legal services to the public by unsupervised paralegals is, in our mind, an obvious one. Potentially, members of the public suffer as a result of their own individual cases not being properly handled. However, and perhaps more important, the administration of justice in Ontario has the possibility of being held in disrepute if unqualified persons, carrying out legal services, are associated with the legal system per se.

Our committee is concerned with the delivery of legal services of any kind by unsupervised paralegals. The committee is aware of disbarred lawyers, people with criminal records and other persons whom the committee would not want to be representative of the legal system in Ontario who are carrying out and delivering legal services to the public. The representation of the public by a disbarred lawyer is such an insult, in our opinion, to the legal system that the committee believes that this problem should be dealt with by either the government or the Law Society of Upper Canada immediately.

We go on in the next few pages of our brief to talk about the kind of task force that we would like to see look at the delivery of legal services before anything further is done on Bill 42. On page 9, we quote from the CBA-O report, which talks about the necessity to assess all law jobs. There are certain things that they want determined, and we support those conclusions.

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The paralegal committee of the County and District Law Presidents' Association further supports the conclusion that this kind of analysis of legal work must be undertaken "in order to respond in a principled and professional way to the challenging new developments in legal services that are apparent to all." That is quoted directly from the report, at the page indicated.

At this point, the committee is more cautious than the CBA-O committee in categorically stating that there are a number of law jobs that can be performed by unsupervised paralegals. Also at this stage, the committee does not agree with the CBA-O report at page 24, which states that the "preferred course of action is the creation of a licensing scheme for designated groups of paralegal agents who would be permitted to perform specified legal services independently of lawyer supervision."

At this stage, the committee is proposing that unsupervised paralegals are not qualified to carry out the delivery of any legal services to the public. The committee is aware of the recent decision by the Court of Appeal with respect to the POINTTS case. That case has made it clear that there are cases where paid agents may be allowed by legislation to represent the public for a fee. Whether this is in the public interest, to have unsupervised paralegal agents representing the public in all tribunals and courts that the present legislation allows, our committee is uncertain of at this stage. The committee is not convinced that a general competency section in legislation will adequately protect the public. The committee strongly recommends that the government appoint a task force to study the issues and make recommendations that would assist the committee in deciding these important questions.

The committee is of the opinion that Bill 42 is premature because of a number of unanswered questions and unresolved issues about the delivery of legal services in Ontario by unsupervised paralegals. The committee believes this legislation is not capable of addressing all the issues because the issues had not been set out clearly before the legislation was drafted. As an example, Bill 42 leaves it open for the expansion of services that can be completed by paralegal agents, but there are no guidelines anywhere that a committee or government agency could rely on to assist in the demarcation of jobs that can or should be completed by paralegal agents and those that should not.

Pages 12 and 13 of our brief are a series of questions, and I do not intend to read them. They are questions that we have brainstormed about, that we consider important unanswered questions that either the standing committee on administration of justice or the task force could look at--and they are just a sampling--in deciding the whole issue of the delivery of legal services by unsupervised persons. We believe these are important questions that have not been looked at prior to the drafting of Bill 42 and certainly prior to this bill receiving third reading.

On page 13, it is interesting that in the recommendations of the Report of the Professional Organizations Committee made in 1980, it stated that it would not recommend at that time the carving out of so-called routine services and opening up same to other service providers. Our committee is interested to know what has changed since that time to make that no longer a valid proposition, what has changed since 1980 to justify a new approach to this issue and what information is available to this committee and to the Legislature to indicate that a new approach is necessary and would result in

"substantial net benefits therefrom," which is what the professional organizations report said was not necessary in 1980.

The paralegal committee of the County and District Law Presidents' Association passed a resolution in October 1986 which I have basically expanded on for you now. The conclusion of the committee at that time and now is that Bill 42 should not proceed to clause-by-clause amendment or to a third reading until the issue of the delivery of legal services by unsupervised paralegals in Ontario is thoroughly examined.

This is a fundamental issue for lawyers as well as for the public. It goes to the very heart of the administration of justice and the delivery of legal services in Ontario and must not be approached on a piecemeal basis. If the problems with Bill 42 are not remedied and the bill is passed at this stage without further study, the Ontario government will not do justice to the high regard in which lawyers and, we are certain, the majority of the public in Ontario hold the law.

The County and District Law Presidents' Association would be pleased to assist on any task force that is set up to look at the whole issue of the delivery of legal services by unsupervised paralegals. The committee believes that lawyers must be adequately represented on this task force. This is not so that they can protect their self-interest or ensure that they maintain a monopoly on the delivery of legal services in Ontario. It is because the vast majority of lawyers are sincerely committed to the administration of a good justice system in Ontario and to the delivery of good legal services to the public. Lawyers want very much to be part of any decision-making process that will impact on those two areas.

The members of a task force that will address issues set out in this brief, the CBA-O report, the submissions of the Law Society of Upper Canada and the Professional Organizations Committee report will be able to make recommendations in an all-encompassing rather than a piecemeal approach. This will benefit the public and, accordingly, the lawyers in Ontario.

That is my brief. I am willing to take any questions if anybody wants me to elaborate on anything.

Mr. Chairman: Let me thank you on behalf of the committee for a very well researched brief. This will certainly be of help to us in our deliberations. The overview you have given from the perspective of your profession is of course of value in the process this committee is going through. I am sure there will be some questions. I have some and I think members of the committee have some.

Mr. O'Connor: Thank you very much for your attendance here today. Your fundamental and first recommendation is that Bill 42 not be passed. The difficulty with that approach, and I think you allude to it and recognize it throughout the brief, is that as the courts have so far held in the POINTTS case, the paralegals practising in the lower court system in that case, in provincial offences court, and in other cases in small claims court and landlord and tenant tribunals, agents specifically as defined are permitted to act for a fee and are quite legitimately doing the service that statute permits them to do.

There seems to be an answer to one of your questions. We have heard figures of about 1,000 paralegals, so-called, in the province practising at present. As to the necessity of Bill 42, it seems to me that if they are

legitimately acting in these court systems, for the protection of the public there should be some rules and regulations, some educational standards, some certification process, some requirements for the carrying of errors and omissions insurance and some requirement for ensuring they be of good character and moral standard--the preventing of disbarred lawyers in other words and this is exactly what section 4 would do--with a disciplinary procedure similar to that of lawyers when they screw up and so forth. This is another area you could delve into.

Mr. Chairman: Are you speaking from personal experience, Mr. O'Connor, or just in a generic sense?

Mr. O'Connor: That is exactly what I suggest Bill 42 is intended to do. If we simply put it off, I think there continues to be very severe potential for damage and harm to the public by totally unqualified and perhaps in some cases unscrupulous people who will take advantage of that ability to attend in the lower court system, but who will be totally unqualified to do so. Do you not think this is a first step to provide that protection, which now is lacking, keeping in mind dealing only with the court system and not dealing at all, as we learned yesterday, and not intending to deal with uncontested divorces, so-called simple wills whatever that means, powers of attorney and so forth?

Ms. Mossip: In brief response, I do not think our courts have ever been policymakers in our province. The courts have said that the present law allows for the use of agents in our courts. We are not disagreeing with that and certainly that is going on quite legitimately, particularly now since the Court of Appeal decision. We are not saying that should stop. After a task force looks at it, it might not stop even then. I do not think the courts said it was necessarily a good thing. They did not say it was a bad thing. They simply said that it is allowed now and that the Legislature should do something about deciding what other work should be allowed by paralegals because it was proliferating.

The problem is that if you say Bill 42 deals only with the agents in court and therefore we should let this get through and then we will deal with the other matter, I just think that is a really inappropriate way to deal with the whole issue. You know very well that a lot of paralegals do not just do representation in court and that they are doing a wide range of work. If you are legalizing and authorizing certain work by statute, then you are implicitly--I am not saying by definition--saying that the other work will be allowed under certain criteria.

If Mr. Justice Zuber can rearrange the entire court structure in less than nine months, I do not see why a task force looking at this issue of paralegals, which has been around for many years and at least since the report in 1980 that looked at it then, cannot be put off a little bit longer.

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Mr. O'Connor: Frankly, it is because they are burgeoning. It is because there are 10 times the number there were in 1980 and it is becoming a potentially serious problem. Already we have had instances of some paralegals bilking the public and some unscrupulous and undesirable people practising the paralegal trade.

To repeat very briefly, the only reason for going ahead with this bill is that we know these people can act. They have been legitimized by this

Legislature by including the word "agent" in the various statutes that govern the lower court system. We are not sure about the others that I mentioned.

I agree with you entirely about a task force. That is a great idea. I think we should take that up and go full speed ahead with a task force to determine the lines of demarcation for all those outside the specific lower court system mentioned in Bill 42.

I have one more question and then I will turn it over and perhaps come back. You indicate you are not happy with the approach of the bill as to a governing body, or the approach of the law society as to a governing body or to a self-governing body. Among those three, do you have any preference? What are you suggesting to us in that regard?

Ms. Mossip: I did not say I was not. We said we had concerns with all of them. Obviously, the law society has a conflict-of-interest problem that has to be addressed. Whether it can be protected in some way by how the committee is formed I do not know, but it has a clear conflict-of-interest problem. It is the most logical group to administer or to protect the delivery of legal services in Ontario but it has a conflict-of-interest problem.

We do not have who we would want to regulate the paralegals. All I am saying is that the regulatory body, whomever it is made up of, is extremely important in dealing with the whole issue and I do not think it is adequately addressed by saying it will be a committee of the law society. That has lots of problems.

Mr. O'Connor: All right. I will pass. I may come back if there is time.

Ms. Gigantes: I would like to thank you for your presentation. I am thinking beyond the presentation to how you read the bill. We had some discussion yesterday in committee, as a result of a presentation, about the status of people who provide aid services of a kind that might be called paralegal but who would not be licensed under this legislation and whether they would exist after this legislation was passed.

For example, we had an appearance by a gentleman who is providing a service as an agent, without pay as it happens, to a community group with which he is associated in Ontario Municipal Board hearings and before small claims court. He foresaw a difficulty, if we pass this legislation, that an agent such as himself who is receiving remuneration from the group would have no status under this legislation and might not be able to function. In other words, he was suggesting to us that if we pass this legislation, people who are not licensed under this legislation could no longer act as agents, as he is doing. He is doing it without remuneration.

Ms. Mossip: I do not think this bill takes away that ability. Honestly, I do not.

Ms. Gigantes: Would it not be read as an infringement of--if such a person were being paid by the community group, which is quite possible and that does happen--

Mr. O'Connor: If I can answer that, he would have to become qualified under this statute. The thought was that there would be some grandfathering provisions for those experienced in the field. Under clause

3(1)(b), the committee that sets up the educational standards could make that provision.

Ms. Gigantes: That is not what I am talking about. If we look at the bill as it now stands, we are being told that representation by a paid agent who is not a lawyer could only be by somebody who was certified under this legislation. Leave grandfathering aside. If a community group springs up in the Niagara Peninsula three years from now and wants to pay somebody from that community to represent it before the OMB, my question is, would you read this legislation as saying that could not happen?

Ms. Mossip: I think they would have to be qualified. If they are receiving remuneration, under this legislation they would have to be qualified.

Mr. O'Connor: Yes, that is the way it should be.

Ms. Mossip: If they are not receiving remuneration, I think it is the same as it is now.

Ms. Gigantes: "They should be," say the lawyers.

Mr. Partington: They would not be lawyers; they would be geologists.

Mr. O'Connor: The whole idea of the bill is to ensure that there are qualified people receiving pay for acting as paralegals in legal matters.

Ms. Gigantes: It may be the choice of various groups or individuals that the person most highly qualified to appear before an agency of some kind or a tribunal hearing is not a lawyer. It may be the case that the most qualified person is not a lawyer because of the special expertise or knowledge or whatever of the area that is required.

Mr. O'Connor: If he has that kind of expertise, then he could qualify as a paralegal.

Ms. Gigantes: He or she would have to go through this whole educational routine, get certified and all that jazz. We are talking about life as she is lived in Ontario. I certainly know of community groups that have hired people who are nonlawyers to give them advice, which they would probably seek in a case before the Ontario Municipal Board in the form of an agent's action. I was just curious about your reading of that.

Ms. Mossip: My understanding is that if they are receiving remuneration, they would have to become a qualified paralegal agent.

Ms. Gigantes: The other questions I would have raised have been covered by Mr. O'Connor.

Mr. Chairman: I would like to pursue a question that I think Mr. O'Connor touched on, but I am a little troubled. Let me say at the outset that I have a great deal of sympathy with the brief you have presented to us this afternoon. I am in a bit of a dilemma, however, recognizing the actions that Mr. O'Connor described for you that have already been taken by the courts where, in effect, they have already carved out certain sections of activity that are looked upon now, in a legal sense, as being appropriate for the paralegal industry.

The interim problem we are going to have in terms of timing before we

get to some sort of solution, which we on this committee recognized and dealt with yesterday, is going to be very clearly centred on the issue of how we establish the parameters for the various services that may be offered by a paralegal. To give you one example, we had a request made earlier in the meeting, which I discussed, in connection with a paralegal who is involved in immigration matters.

My question to you is, if it did take nine months to suggest the reorganization of the court system that you alluded to earlier, or if it took a year--

Ms. Mossip: It has not been done yet.

Mr. Chairman: No, but you indicated that it could be done within that time frame.

Ms. Mossip: Potential.

Mr. Chairman: If it took a year, which would be realistic for a task force to get all the input it requires, draft legislation and come forward with a position, which in this case I think is going to be very complicated in terms of what a paralegal really is by definition--I can see a tremendous amount of confusion and problems developing in the various communities in the course of those 12 months. I have a concern, although I have to admit I see certain limitations in the effectiveness of Bill 42 that we have before us. I am also looking at the real world Ms. Gigantes was talking about and that is that things are going on while we speak.

What would you suggest we do in the interim, even if we opt for your choice, which is a task force? What happens in that 12-month period? That is the part that concerns me. The court challenges will continue. I think we are fairly clear that is going to happen.

Ms. Mossip: I do not think anybody is going to challenge the use of agents any more. They are not going to challenge them in court any more, not at this time, because agents are authorized by POINTTS to act.

Mr. Chairman: Even in so far as certain other activities extending beyond those that now have been--

Ms. Mossip: No, that is still being pursued by the Law Society of Upper Canada's section 50 remedies. Is that what you meant by court challenges on other paralegal work?

Mr. Chairman: That is right.

Ms. Mossip: I am sorry; I misunderstood you.

Mr. Chairman: I am concerned about the parameters, the limitations and what the definition of a paralegal is really going to be. I see court challenges coming forward with respect to other areas of activity that perhaps we have not even thought of in this committee at the moment. Assuming that happens, and I think it is a reasonably educated guess, again my question is, what do you suggest we do during the interim? I think that is really what developed the initiative on the part of Mr. O'Connor to bring this bill forward, not that he thought it was without any problems or that it covered

the question in its entirety, but I believe he was looking for something as a stopgap for a period of time until he got to something that was perhaps better.

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Ms. Mossip: You are the people who have to decide this. I do not believe as important an issue as this can be dealt with in a stopgap fashion. I do not believe the problem is so rampant throughout Ontario that you have to pass this legislation, which clearly has problems. I am sure Mr. O'Connor's motives were very well founded and he did the best he could. Even if this entire bill was gutted and changed considerably, it is still establishing the formation of certain law jobs that, yes, the court has said are authorized now but nobody has said whether or not that is a good thing. Whether or not this province says it is a good thing, the courts say they are allowed to be there.

I do not have an easy answer to tell you what you are supposed to do in the meantime. Maybe the lawyers in the policy branch at the Attorney General's office could suggest some competency requirement that could be instituted in the meantime. I do not think passing Bill 42 is the answer to that problem. The paralegal industry has been around for a while and it is going to continue to be around until the legislation is passed. I do not think passing this is the answer to that problem.

Mr. Chairman: Others of my colleagues wish to raise a question but I want to pursue this one more step and that is, again, by way of caution. The franchising of this industry is a relatively new phenomenon. It is happening now with POINTTS, as an example. The proliferation of paralegals as we have known them, let us say in the early 1980s, and the numbers we are confronted with today are simply two different situations.

From my perspective, from what I have seen, from what I know about it and have read about it, it would appear this is going to be an industry that is going to expand very rapidly. It is now moving into communities where we have never had paralegals before. I have a concern, as you do and as you pointed out in your brief, about the level of competency of particular paralegals.

Yesterday we raised the question with POINTTS, as an example. A specific question to them was whether they would hire anyone other than a police officer as a franchisee or as someone who would handle cases within the rather strict limitations that they had put on their particular service. They indicated they would not. But they already have one individual within their organization who is not a police officer, who is a law clerk of some kind; I am not sure whether I have the title correct. He is working with POINTTS at the present time and is involved with the organization.

I guess the issue before us is whether or not this is going to continue to grow and whether or not we should be taking some interim, to use the word again, stopgap measure in the hope that a task force or something can come forward with some more comprehensive legislation. I really concern myself with that.

Ms. Mossip: I would say it is naïve to think that if this bill was passed tomorrow your problems would be over; that is all.

Mr. Chairman: I agree.

Ms. Mossip: The agents' work in the courts is probably the least of

the problems around the whole issue of paralegals and unsupervised delivery of services. That is the least of the problems. They probably do their most competent job as agents before tribunals and courts, so passing this is not going to solve the problem of delivery of legal services to the public by incompetent or unsupervised people. It is naïve to think that passing this tomorrow is going to solve the problem.

The day after this bill is passed, you are going to have tons more problems, because they really are not the serious problem, as the court recognized. There is a competency requirement that the courts could deal with now if they thought that people appearing before the tribunals and courts were incompetent or inadequately representing people. Probably in legislation, the Courts of Justice Act or even in some of the legislation that allows agencies, the judge could kick them right out of the courtroom. It is not happening because in a lot of cases, frankly, they are competent to act for those people and represent them. That is why it is premature. It is solving an aspect of the problem that is not the biggest threat to the public, in my respectful opinion.

Mr. Chairman: What you are saying is that a staged approach, with Bill 42 being one stage and followed by perhaps something along the lines of what you have outlined in your brief as a second or third stage of the process, is a worse cure than to do nothing and to wait 12 months for a task force. In effect, you would rather see us do nothing other than to get the task force under way and to study the question more thoroughly than to take this initial step and proceed with something to follow. Is that your position?

Ms. Mossip: That is absolutely correct.

Mr. Partington: Subsection 8(1) says, "A registered paralegal agent may act...before a coroner's inquest." Has that right of an agent ever been challenged, to your knowledge?

Ms. Mossip: I have no idea.

Mr. Partington: If you have that in there, then conceivably an individual could retain an agent at a coroner's inquest; that individual, perhaps as a result of proper or improper proceedings, could be charged subsequently with murder, for example, and get a life sentence. The coroner's inquest would be part of that proceeding and perhaps would be the basis upon which the ultimate conviction was obtained, if this was passed in this form. Is that correct?

Ms. Mossip: I am sorry?

Mr. Partington: For example, if you have a coroner's inquest, an inquest is into death. An individual who is involved in the death retains an agent to represent him or her at that coroner's inquest. As a result of the inquest, the police could possibly lay a murder charge, for example, and ultimately the person goes to trial and could be convicted of murder.

Ms. Mossip: You are saying that is a serious problem right now?

Mr. Partington: I am saying, could that not happen under clause 8(1)(d) of the act: "A registered paralegal agent may act in a proceeding... before a coroner's inquest"?

Ms. Mossip: Yes.

Mr. Partington: I guess I just posed you the question that, as a result of a representation at a coroner's inquest, which is an inquest into how, when and where a death occurred, etc., a person could be charged with a capital offence. Is that proper?

Mr. O'Connor: I can answer that.

Mr. Partington: We are going to have Mr. O'Connor answer that, I guess.

Mr. O'Connor: If I may address that, that is exactly the problem we are facing and exactly why we need something like Bill 42. At present, the Coroners Act of Ontario permits agents, unsupervised agents, to appear at coroners' inquests. Lacking Bill 42 or something like it, anybody--qualified, trained or otherwise--can call himself an agent, attend coroner's inquest court and appear for somebody, whether or not he is trained or qualified.

In each of the cases in section 8, which means the provincial offences court, small claims court, landlord and tenant matters, coroners' inquests, etc., the Legislature has already decreed that agents can appear in those tribunals. All the bill does is make sure that those agents are qualified; it provides that there must be an educational standard and a certification process so that there is some training to try to prevent what Mr. Partington is suggesting might happen, that some incompetent clod represents somebody in a coroner's inquest, subsequently a murder charge is laid and the guy goes to jail. That is all we are trying to do.

To take issue with one thing Ms. Mossip said about the courts making policy and whether that is a good thing, I would suggest the courts are not at all making policy. This Legislature has made the policy by putting the word "agent" in these various statutes. All the courts are doing is interpreting--quite correctly, in my opinion--that agents can appear in those courts. If they can appear there, let us make sure they know what they are doing. That is all the statute does.

I will finish--and then I will shut up, Mr. Chairman--by complimenting you on several statements. One, in the middle paragraph on page 8, could not have been better written; it summarizes exactly my thoughts on this whole thing: "The committee is particularly concerned with the rapidly increasing use of unsupervised paralegals who are business people and who have the potential of exploiting the public for monetary purposes and not providing acceptable legal services." That is exactly why we need Bill 42: to stop that.

Because these courts can already operate, why not deal with them first and then get on with the demarcation of these other people, who in my opinion are really quite marginal?

Ms. Mossip: Because it will not happen that way. It just will not happen that way, in my opinion.

Mr. Chairman: Ms. Mossip, do you have to get away by 4:30?

Ms. Mossip: I have already informed them that I may be late for that. This is important.

Mr. Chairman: We will try to conclude at 4:30. I wanted the

committee to know that you have a time problem that we should recognize.

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Ms. Mossip: Thank you.

Ms. Gigantes: I think we should acknowledge that the practice in Ontario these days seems to be that you charge somebody with murder and then you hold a coroner's inquest.

Mr. Chairman: Do you have a specific case in mind?

Ms. Gigantes: Yes, I have a couple in mind.

You have suggested that, in your view, the least of the problem in terms of assuring service of an acceptable standard to the public of Ontario occurs in the operation of paralegal services in the courts. Where is the most of the problem?

Ms. Mossip: That is not all tribunals. I think there are some tribunals and court situations where unsupervised paralegals may be more of a concern, such as in the immigration and Workers' Compensation Board areas, that sort of thing. I was just making a general statement about that.

The greatest concern our committee has is in the holding out of legal knowledge in other areas, whether they be divorces, wills, corporations or others, where the person may not have knowledge. Our committee is not of the opinion that one can do a simple, uncontested divorce without having sufficient legal background to be able to tell someone what he is and is not entitled to.

You often hear someone say, "We will do only simple divorces and simple wills." It is our committee's opinion that there is at least a base amount of legal knowledge that has to be known to even decide whether it is a simple will, a simple divorce or a simple incorporation. The holding out to the public that someone is able to even make that decision is, in our mind, a very frightening thing to the public when one knows how much one can lose under the new family law legislation or with respect to the wills and the ramifications of the Family Law Act, 1986. For someone to hold out that he can advise someone that something is simple and straightforward is very troublesome to the committee.

Ms. Gigantes: Would it surprise you to know that it is not an uncommon experience for a member of the Legislature to have a resident of the riding he or she represents come to the constituency office with a pile of legal bills for a Worker's Compensation Board problem that has not been solved and which gets solved satisfactorily afterwards by a paralegal assistant? When I say "paralegal," it is on a volunteer basis. That is a regular occurrence, in my experience.

Ms. Mossip: Honestly, I do not know how to answer that. I am not going to dispute that there may be legal problems that can be solved in a--

Ms. Gigantes: These are administrative problems. They have to do with the Worker's Compensation Act and somebody's ability to have a case properly dealt with.

Ms. Mossip: I am not going to defend the entire legal profession in

the way it may administer its offices or the law. Because we have lawyers whom someone may have a complaint against, either for fees or the way they have handled their files, does not mean we can pass a law that says: "You cannot do that any more. Paralegals can do it better." I cannot correlate those two things.

I hear what you are saying, but I do not think it necessarily means that all lawyers would have handled that the same way, nor would all paralegals have expeditiously helped that client.

Ms. Gigantes: In dealing with this kind of question, we have to be frank with ourselves and the public about the fact that while there are standards applied for the operation of the legal profession as it exists in Ontario, that does not solve our problems with the legal profession from the public point of view. To simply say that all matters of law are better dealt with by lawyers does not offer a solution to people who may need very specialized help and are not necessarily assured it.

Ms. Mossip: With respect, neither our committee nor I say that all legal services have to be provided by lawyers. Most lawyers in communities have always been behind the legal aid system in setting up legal clinics which gives an awful lot of work to community legal workers. Lawyers never complain about that kind of assistance to people who may not be able to afford legal services or who are also more skilled in processing certain kinds of work faster and more expeditiously than lawyers. That is not the issue.

I do not know what work can be done by unsupervised paralegals. I am not sure. If this committee and the Legislature thinks that it knows what work can be done by unsupervised people, then really they are wiser than me. I am not saying we have to do it all.

Ms. Gigantes: If we do not pass Bill 42, what we have, given the POINTTS decision, is a situation where paralegals operate as they do now without any structure. Are we any worse off if there were a structure?

Ms. Mossip: In my respectful opinion, yes, because you are legitimizing something that you do not even know whether it should be legitimized or not.

Ms. Gigantes: In other words, you are saying it is worse if we pass Bill 42.

Ms. Mossip: Yes, I am. Absolutely.

Mr. Chairman: I know we could go on at some length, but I look forward to reading your brief in further detail and certainly your submissions before our committee are very helpful. We are going to struggle with this question, I can assure you, and we have to do so in a very short time frame, but I thank you for your input and for patiently responding to our questions.

Ms. Mossip: You are quite welcome. Thank you very much for hearing me.

Mr. Chairman: We have you out four minutes ahead of time.

The next delegation is the Canadian Bar Association--Ontario. I believe we have Stephen Cameron, the president; Peter Waite, director of communications; and Professor Mary Jane Mossman, chairperson of the paralegal

committee. I also understand, if my information is correct, that you do have a written submission to follow, but that it is not, as yet, completed and we will be receiving that at some later but early point in our thoughts about this particular question, so we will look forward to receiving that. For the moment, let me thank you for coming before us. We look forward to your verbal submissions and we welcome the opportunity to hear what you have to say on this very complicated question.

CANADIAN BAR ASSOCIATION--ONTARIO

Mr. Cameron: My name is Steve Cameron and I am here in my capacity as president of the Canadian Bar Association in Ontario. Mary Jane Mossman is a professor at Osgoode Hall and associate dean and she was the chairperson of our paralegal committee.

Just for background information, the bar association is a national association comprised of about 35,000 volunteer members; judges, lawyers, law students and law teachers. In Ontario, our membership is about 14,500. It is involved in all areas of making life better, presumably, for lawyers. It is proud of its role as a voluntary professional association for a large number of lawyers in this province. Its activities are directed, among other things, to improving the quality of legal services delivered in Canada and it does that by hopefully improving the relationship that exists between lawyers and the persons whose interests they serve.

In the past, the bar association has established committees that have reported to a number of committees of this Legislature on many aspects of the proposed changes, most recently with respect to loan and trust companies and in the past on many matters from the Ontario Business Corporations Act to pension reform.

The Canadian Bar Association in Ontario affirms that lawyers today, as in the past, attempt to practise their profession well and in the public interest. The first duty of being a lawyer we are told when we enter law school is to the court and to his client. We are proud of the contribution we have made and continue to make to the public good.

The report we have is not an academic treatise. It is not intended to be an exhaustive overview of matters that have been raised in other studies or other public debates. I think it is premised on the fact that consumers of legal services in Ontario are normally persons in need of expert assistance and are not mere pawns in a game of trade. When I say that, the rule of caveat emptor really cannot apply when you are selling your services from a legal point of view to the public.

If you are going to a store to buy a television set, you can fairly well rest assured that if you know the name of the manufacturer and there is a warranty, if you make your payment, nine times out of 10 you are not going to have a particular problem and in those cases where you do, there is probably a fairly simple remedy.

But when you go to seek advice from a legal point of view it is not the same, because what you need is someone to tell you whether you need that expert assistance or whether it is something you can do yourself.

It could be misleading, because I think we tend to equate it with "paraprofessional" or "paramedic." There used to be a TV program my kids watched, called Emergency, that involved a bunch of paramedics going around providing an instant service on the spot. But "paramedic," as you can appreciate, is a derivation of "parachute." It means someone who is parachuted in to solve an emergency situation when other things do not happen.

When we try to do that life-and-death set with respect to legal services in Ontario, equating that with paralegals could be a misleading situation, because today, as I think the committee is well aware, there are no set standards. There are no objective credentials. There is no formalized training. Anyone in this room, for instance, could go out and set up as a financial adviser, and who says you know or I know more about advising finances than anyone else?

There is also no way of determining the value of the proposed service or work. Sometimes, in this modern world, simplistic answers to complex problems are seductive. I think the nature of our report indicates that legal services cannot really be described in three words or less. The nature of legal services to be provided cannot be described easily.

We are here today to address our concerns on the impact to the legal community and to the legal health of the citizens of Ontario. The bar association, I should say, tries to be proud of the legal profession. We tend to live vicarious lives; I think it is a service profession, similar to the profession of being a politician, in some respects, because you are always looking out for the other person. That is our credo.

We are here today to say the citizens of Ontario should be considered the clients of the bar association, and to ask, "Do you know what you are doing?" If you do, fine.

If you read some of the brochures on the paralegals already in existence, they indicate they are attempting to deliver those services on a self-help basis. But if you look down the alleged price list, I think the matters there that can be purchased are rather extensive, and the protections afforded to the public through the disciplinary process and the licensing and education requirements of lawyers is not there.

At this stage in the social contract realm, society has given the monopoly of the delivery of legal services to the Law Society of Upper Canada, on a contractual basis, in the same manner it has given the licensing powers in the medical service to this community to the College of Physicians and Surgeons of Ontario.

Who best could tell whether a doctor has the qualifications to diagnose disease and operate when necessary? Hopefully, it is another doctor. Similarly, who best has the right to determine the legal health of the nation? This monopoly is not given to lawyers for lawyers, but is given in the public interest. Unless and until there are set standards, with objective criteria, in the method of establishing a demarcation of what is and what is not a law job, to proceed with Bill 42 without these matters in place could continue to mislead the public.

With that brief introduction, I would like to turn it over to Ms. Mossman as the chair of the committee and she can go into the details, the makeup of the committee and what our report consists of.

Ms. Mossman: I want to talk very briefly about, essentially, three aspects of the report we have prepared and which we are now preparing to present to you. I anticipate you will, indeed, have it before the end of the week.

The first point is important from the point of view of the Canadian Bar Association: that is, to tell you who was involved in the preparation of the Canadian Bar Association--Ontario position on this topic. Although, as Mr. Cameron has indicated, the Canadian Bar Association is generally composed of people either with legal training or in the process of acquiring that, in the case of students, this particular committee was a rather special one because it involved access to a lot of other people, both as members of the committee and also as resources to the committee.

The committee included three lawyers from very large Toronto law firms but those three lawyers were people who had, individually, experience in working with law clerks in litigation, in real estate and in corporate and commercial law. It included a lawyer from St. Catharines who works in a community legal clinic and who in that capacity had trained and now supervises paralegal workers in that community legal clinic. It included a lawyer from the practice advisory office of the Law Society of Upper Canada whose main function in the past two years has been to deal with the people who have been complaining about the kinds of services provided by paralegals across the province.

It included a lawyer in a small criminal law practice in Toronto who appears regularly in the criminal courts in Toronto and who on a part-time basis is a supervisor of law students who provide legal services in a broad range of administrative tribunals and lower courts in Toronto. It included four lawyers from locations outside Toronto, generally in smaller practices, but practices that in every case have experience of working with law clerks; that is, people who are supervised but who are not themselves qualified as members of the legal profession. Those four lawyers came from firms in Kitchener, Sault Ste. Marie, Goderich and Ottawa, four obviously very different kinds of places, and obviously attempted also to present a broad range of experience to the committee.

The committee also included two law clerks--that is, two people who work for large law firms in Toronto doing the work of supervised paralegals--and it included a community legal worker from a legal aid clinic in Halton Hills.

It was a very big committee and it was also a very broadly representative committee. We at the Canadian Bar Association take pride in the fact that the committee was not simply representing people who are themselves lawyers, but also represented people who are doing the work of unqualified members of the delivery of legal services.

The second matter I want to address in relation to the brief is a simple question that the CBA-O committee looked at, to try to say what is the issue in relation to Bill 42 and in relation to the regulation of paralegals. What have we really got on our plate when we talk about what is really at stake? What is the central core of the impact of Bill 42? The answer that the CBA-O committee came up with is that what we are really talking about is what is in the public interest in relation to the general delivery of legal services in Ontario for the 21st century. That is obviously a pretty big question.

I want to emphasize two parts of that. One is that what is in the public interest was very much the approach we took in the preparation of our report

and in the preparation of our brief for you. Second, we are trying to look not just at the problem that exists at the present time, which we acknowledge to be a serious problem that deserves both our concern and your consideration, but also that in solving the immediate problem, we not lose sight of the fact that we are really talking about the tip of the iceberg in terms of the dramatic changes that are taking place and that will continue to take place in the delivery of legal services for the future.

If one thinks about the general context within which we should be looking at Bill 42, the CBA-O committee's brief will tell you that you should be looking at Bill 42, not in isolation but in relation to the work that lawyers have done and are doing at present: prepaid legal insurance schemes that are beginning to make an inroad here as they have in the United States; the increasing development of legal aid clinics across the province and the significant role they play in giving legal advice, not just in representation of low-income people but also in giving general legal advice to the community at large; the changes in the law society's regulations with respect to the advertising that is permitted by lawyers; the franchising of law offices themselves; the mergers that are occurring across the country among law firms from one province to another, from one country to another and within provinces like Ontario itself; the impact of computer technology on the efficiency and comprehensiveness of legal services that are able to be made available to the public; and finally, the incredible rate of legal change for which the people in this room are at least partly responsible.

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If you put all that together, the CBA-O committee's view is that we are in a situation where legal services in the 21st century are likely to look substantially different from the way they have looked to this point in time. In solving this one difficult and serious problem, we ought not to do it in isolation from all those others.

If we go back to the question of what is in the public interest in relation to the delivery of legal services for the 21st century, then we put this question of Bill 42 in that context: whether it is appropriate at this time to recognize a new profession of paralegals and to regulate, legitimize and recognize the appropriateness of their present activities in terms of what may happen in the future, and even if we want to do that, whether Bill 42 is the appropriate vehicle for accomplishing that.

I said that in relation to the question of what is the issue, the answer the CBA-O committee has given to that particular question is that we think this is something that is important and needs to be considered in answering this question.

I also thought I should tell you that the CBA-O committee has also effectively decided that there are three important things to keep in mind in designing the future of legal delivery services in Ontario. One is that legal services should be and become more accessible to the public. Second, legal services should be and should become more affordable to the public. Third, there should be--and we should make very sure of this--an assurance of the minimum standard of quality being met by whoever is providing those services.

If you think about that, access, affordability and an assurance of a minimum standard of quality, it seems important to use those tests as a way of

attempting to design the activities of paralegal agents in relation to the other kinds of activities that together form the legal services in Ontario.

I think it is important for me to have said all of that to you, because I want you to understand the approach the CBA-O committee was taking to this issue. It is by no means an approach that is limited to a protection of the status quo, either for lawyers or indeed for anybody else. It is a projection that hopes to take account of a whole lot of other activities that are linked to Bill 42 or that should be. Second, it tries to think through the question of what legal services would look like if we sensibly tried to plan for 50 years from now.

Having said that, the third thing I want to tell you is essentially the position that the CBA-O has adopted at this stage. The CBA-O wants to commend Mr. O'Connor for designing and drafting Bill 42 because it has provided us with an opportunity to think about these issues in a way that we probably would not have been able to do in the absence of something as concrete and interesting as Bill 42.

Unfortunately, however, the CBA-O position is that Bill 42 is at this point not the appropriate solution to the particular problem. I want to say two things about that.

One of the problems is that we are not confident that Bill 42, as it presently exists, addresses the larger picture in a way that effectively solves more than a very immediate, pressing and important problem, but that in solving that very pressing and important problem immediately it may indeed create problems of its own that are far larger and far more difficult to solve in the long run. One of our concerns is that seen in isolation, Bill 42 is likely to be no more than a stopgap measure, to be an expensive stopgap measure and to be a measure that effectively produces its own kinds of difficulties that we will subsequently have to solve again.

The second analysis or second approach to it, however, is to take it essentially on its own terms. That is to say: "Let us not look at the large picture. Let us just look at Bill 42."

On its own terms, we have three basic concerns. One is that the bill itself is clearly drafted within the context of the law as it is presently determined and the choice of what is included in section 8, in terms of the scope of practice of registered paralegal agents, is entirely linked to existing legislative arrangements with respect to agents.

What that means probably is that the range of matters that might be included is probably not there. In other words, there may be a problem with section 8 in terms of it being under-inclusive; some things may in fact be left out. If we are going to create a new profession, it does not seem sensible to say, "Let us create a profession based on the exigencies of arbitrary and ad hoc particular arrangements and statutes that we glean from all over the place and put in one little pocket."

The second thing is that because registered paralegal agents may work without being under the supervision of lawyers, there is a very good chance that there are many people presently working as supervised law clerks who would choose to become registered paralegal agents, and that the bill itself, by registering paralegal agents and permitting certain kinds of activity is itself going to change the existing market of legal services, which itself is not a problem except that if we are going to tinker with the market, it might

be a good idea to know a lot more about how we should tinker with it so that we get the results we are actually trying to achieve rather than simply unintended, and perhaps rather damaging, kinds of results.

The third thing is that there are probably other activities of paralegals that on some analyses by some members of my committee, are matters that might be done by unsupervised paralegals and those activities are not included within Bill 42 at the present time.

Unfortunately, my committee is desperately divided about what those matters are. Each member of the committee has a different list, which perhaps suggests one of the problems of not really having enough of the kind of information that might be appropriate. So we have a problem with the existing definition of the scope of practice in section 8 as it is presently defined. It is probably under-inclusive. It is going to trigger a change in what supervised law clerks may now want to do and be able to do, and we need to be thinking about what that is going to do in an overall sense. Third, there may well be some other things that could have been included that were not. That is all related to section 8 on the scope of practice.

On its own terms again, we also have a problem because we think that the drafting of the legislation at present is somewhat ambiguous. Once again, if you look at subsection 8(3), that section talks about the fact that paralegals who have the right to representation before tribunals may of course also do all the other work that is related, that does not involve representation.

One of the questions is whether there is some possibility that people will do all kinds of other work when they are never going to end up in any kind of representation. We think that the definition of what paralegals can do in Bill 42 at present is probably going to be another make-work project for the legal profession because there will be all sorts of suits over whether somebody could or could not take on this particular kind of thing.

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While some members of the profession may find that attractive, I suspect I can say on behalf of the committee and probably most people in the Canadian Bar Association that we honestly believe that in this situation we are trying to do something that effectively solves one problem without starting another one. It seems to us that the question of what exactly is that scope of practice is a terrifically difficult problem.

The third problem we have relates to clause 3(1)(i), where it is possible for the committee established under the legislation to prescribe courts and tribunals. While it is clear this may well have been an appropriate solution to the problem of, "What if the legislation is under-inclusive?" and then you want to have some method by which you can extend it, the CBA-0 committee is quite concerned about the fact the committee will do that prescribing.

In the absence of a public debate--we are having a major public debate about whether these matters are ones that might be best handled by a paralegal. We think that if these matters are appropriate for public debate, then surely the matter of the extension to additional groups of activities is also a matter for public debate. We have a real concern about clause 3(1)(i) because of the fact that it involves, it appears, the work of a committee in simply extending the role and ambit of the work of paralegals.

I suppose that is essentially, in a nutshell, the CBA-O position. Probably because this matter was mentioned by the county and district bar association and undoubtedly will be mentioned by the Law Society of Upper Canada, I also ought to address the issue of the regulatory authority.

The Canadian Bar Association has taken a very strong position that the matter of regulating paralegals is a matter that requires the involvement of the Law Society of Upper Canada. It does that for three reasons.

One is for the historic and we believe important reason of the independence of legal services provided to the public. If legal services are to be independent, the regulation of those who provide those legal services cannot be the responsibility of government and must be within the responsibility of some body that is separate from government. That is clearly going to be even more important in the case of the proposed paralegal agents because of the kind of work they do, which will inevitably bring them in conflict with government agencies.

We think the question of independence means there is no possibility of having paralegal agents regulated by government. We therefore think the Law Society of Upper Canada needs to be involved, and of course the law society has traditionally been involved in protecting the independence of the delivery of legal services by lawyers.

Second, our reason for involving the law society relates to the necessity for some consistency in the rules and ethics and arrangements for the delivery of legal services generally. If lawyers must abide by ethical arrangements and paralegal agents may not, if lawyers have rules about the kinds of fees they may take and paralegal agents may not or may have different rules, we are really talking about a great confusion in the delivery of legal services. For the sake of consistency, uniformity and sensibility in the delivery of legal services, there must be a relationship between the regulation of lawyers and the regulation of paralegal agents.

Third, those among the committee who are essentially pragmatic take the position that because the law society is already in place and regulating lawyers and the machinery is there, it is wholly appropriate, essentially, for that organization to take upon itself the responsibility for the regulation of paralegal agents as well. I should say that this is a matter that has been long and heatedly discussed between the Canadian Bar Association--Ontario, the law society and the County and District Law Presidents' Association, but it is a firm position that the Canadian Bar Association's council has endorsed and it is also part of our brief.

That concludes what I have to say, but I and Steve Cameron will be delighted to have your questions.

Mr. Chairman: If that completes all the submissions you wish to make before us now, we have questions from Mr. O'Connor, Mr. Partington and Ms. Gigantes.

Mr. O'Connor: Thank you for your very well thought through presentation. We look forward to getting your brief as soon as possible, as we start our deliberations on clause-by-clause within a week, as you may be aware.

You made a comment that Bill 42 would recognize the new profession of paralegals. In discussions over the past year and in briefs and material I have read, there seems to be the constant theme that somehow the bill

legitimizes the paralegal industry and that that is to be feared. I must say that comes, generally, from lawyers.

I would point out, as I did to Nancy Mossip and to many others, that the bill does not do anything of the sort. It does not legitimize or legalize or recognize a new profession; that profession is here and it is here to stay. It is recognized by the enabling and governing statutes of the courts, as set out in section 8.

If people can come to the realization that that is the case, the bill does not do anything like legalizing or recognizing. It simply accepts the set of facts that currently exists and recognizes the tremendous potential for abuse of the system, through lack of competence or chicanery of those who are able now to call themselves paralegals and who are totally uneducated, uncertified and unregulated.

You talk in terms of going about it in a global sense and trying to plan a legal delivery system for the next 50 years. With the greatest respect, we do not have 50 years. I do not think we have 50 days. These guys are here and they want regulation. Our impression is that the public needs regulation and that we should get on with it. What would you suggest in the interim for the problem I am stating?

We recognize that section 50 of the Law Society Act can take care of some of the problems outside of the statutes mentioned in section 8, and it is working fairly well. There have been prosecutions brought and convictions obtained under section 50 and, to a certain extent, it perhaps adequately controls people doing divorces and wills and so forth. But it is patently unable to control the paralegals operating under the minor court system, as the POINTTS case has shown at the Court of Appeal level.

If not Bill 42, or some regime like Bill 42, what do we do in the meantime? That is the same question I asked Nancy Mossip, and I guess I will ask you.

Ms. Mossman: I think that is an important question and I fully appreciate the concerns you are raising. I certainly do not want to take issue with the fact that there is in place legislation which permits representation by agent in the matters you have included in the draft in section 8, and more with the Court of Appeal decision on POINTTS. I accept both of those. It does seem to me, however, that the legislation which permits representation by agent, coupled with the decision in POINTTS, in the context of the creation of a regime, a system, a profession, is something entirely different from Bill 42.

We might be talking about a matter of degree as opposed to the issue in principle, and perhaps that clarifies to some extent what I was attempting to say when I talked about the legitimization of this profession. At the same time, however, the more pressing question I think we really need to address is what can be done in the interim, if we decide to postpone Bill 42 to do further study in order to have a perhaps even broader form of Bill 42 in the future. What can we do in the interim?

Certainly, it seems one possibility is to have more widespread control and regulation of competence among people who are representing before tribunals and courts on the part of those who are in charge of the tribunals and courts before which they appear. That is happening, as I understand it, in some of those courts and tribunals. Paralegal agents who are simply

incompetent are denied the opportunity to provide representation. That would only involve, presumably, the most blatant cases.

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What might also be very interesting would be the possibility of some kind of public information, by way of explaining to the public that paralegal agents are not legally qualified, that while they have the legal right to be present as agents in some courts and tribunals, no one is assuring their competence.

In some cases, as I understand it, people go to paralegals because they think the fees will be lower than if they go to a lawyer, and I am sure that is true, in some cases. In other cases, however, paralegals' fees are higher than the fees that would be charged by a lawyer in a similar situation.

It seems to me there is a possibility of creating an awareness in the public that they are receiving service in circumstances where there is no one who is assuring competence. One of the concerns I have is that your Bill 42 would effectively say the government is assuring competence in some way, before we have got a mechanism for actually assuring competence. There is no question that the minute Bill 42 is passed, there will be paralegal agents, who are not registered paralegal agents, who will say: "The government of Ontario says I can provide these services. I am legitimate."

It seems to me we are talking about various phases in this process where the public is more or less at risk. I have a concern about the public at risk when the legislation is passed and before the registration system has in fact determined who is competent and who is not.

Mr. O'Connor: That is a mechanical matter that can be overcome. On the question of assuring competence, of course, no system is perfect and will ever, even by a method of requiring education standards and certification, assure competence. In the legal profession, for instance, you get pretty incompetent lawyers.

Ms. Mossman: I suppose when I say "assure competence," I am talking about assuring competence on one hand, and providing mechanisms for adequate remedy where competence is unacceptable on the other.

Mr. O'Connor: One last point and then I will pass it on. You mentioned that your committee is considerably divided on the question of what additional activities might be included under a regime such as Bill 42. Is there any possibility, when you present us with your written brief, that you could expand on that and name some of the areas that may have been common to all committee members? Maybe you can name the areas that were not common so that we can get a look at them.

Ms. Mossman: The brief certainly provides some examples, and I think you will find that somewhat helpful. Perhaps I should elaborate on that point, to say that the committee that worked on this report and produced it was an entirely voluntary committee and, consequently, not in a position to do what we would regard as a really systematic study. Because it was a large committee and had a lot of experience and expertise, a lot of people contributed their views, but the way of actually determining that involved some structure and time beyond that which voluntary committees can ever provide.

Mr. Partington: Supplementary to Mr. O'Connor's question: There is

some concern not only about competency, but about people practising paralegal services who are disbarred lawyers, who have criminal records or a combination of both. How would you address that problem in the interim, under your system, while you studied and worked on proper legislation? How do you deal with these people engaged in the practice who are disbarred lawyers or who have criminal records?

Ms. Mossman: I would assume that it is certainly within the structure of a court or tribunal to determine that someone who is a disbarred lawyer is not permitted to act as agent before that court or tribunal. What we need is for the information about disbarred lawyers to get to the courts or tribunals. Of course, this points out the problem with section 50 of the Law Society Act, because, if what you are talking about is prohibition or prosecution, that is a much more difficult process than regulation.

Mr. Partington: It is a concern, certainly, of many people, and maybe it is one that the bar association or the law society needs to be addressing.

Ms. Mossman: There certainly are measures at local levels, for instance, that bar associations and county and district law associations can take in order to publicize within communities the difficulties associated with disbarred lawyers providing legal services.

Mr. Partington: I have just two more brief questions. You indicated that a bill might be broader in the nature of services paralegals provide. Are you indicating then, by implication, that you agree with subsections 8(a) to (e) particularly? Is there nothing in there that might, in fact, be served by lawyers and not by paralegals?

Ms. Mossman: I think I have assumed that the material in section 8 does not exclude representation by lawyers, but that it does permit representation by registered paralegal agents. It does not exclude representation by lawyers.

Mr. Partington: You do not have difficulty with that? I raised the question earlier with respect to a coroner's inquest, where you could have an agent representing an individual who could subsequently be charged with a capital offence.

Ms. Mossman: Yes.

Mr. Partington: You do not have any problems with that?

Ms. Mossman: The CBA-O committee has a number of concerns with what is contained in section 8, including the coroner's inquest. Probably in terms of just the people on the committee, a major concern is the immigration appeal board and the people who are providing representation in very serious life situations for people who want to come to this country and destroying their chances of ever being able to do that as a result of their incompetency. There was a lot of concern about that.

The difficulty is that, in the absence of changing that legislation to prevent agents from being able to provide that representation, one has to prosecute those people who can be located and to try to deal through the tribunal itself with those who appear incompetent before it. I think those are both very much interim measures.

Mr. Partington: I gather from your submissions that you would not advocate amending this act, just not passing it. Is that right?

Ms. Mossman: Yes, that is correct.

Ms. Gigantes: Can I take you first to the matter that you raised under subsection 8(3), in which you said you had concern or the committee had concern that there might be agents who would do all kinds of work that did not involve direct representation. Could you elaborate on that?

Ms. Mossman: Subsection 8(3) permits the paralegal agent who is registered to attend to matters normally associated with the proper administration of a proceeding. Partly because of the very vague wording of that subsection, we have a concern that it might permit someone, in the course of dealing, for example, with a landlord-tenant dispute that involved a husband and wife who may be separating, to deal with the separation agreement in relation to the eviction of the tenant.

The difficulty is that the wording is so broad that it permits attention to matters not normally associated with the proper administration of a proceeding. There is no question that a lawyer, in circumstances where a lawyer acting in a landlord-tenant dispute finds himself or herself with another problem that arises out of the same one, can deal with that other problem in the appropriate fashion.

While it was obviously intended to permit essentially nonrepresentation work in relation to matters that were properly matters of representation, it seemed to us it could permit additional kinds of work to be done and, indeed, it obviously permits all kinds of negotiations and settlements to be entered into in the absence of representation before the court or tribunal. There is nothing in this section that compels the paralegal agent actually to provide representation.

Ms. Gigantes: I am no expert in the Ontario legislation that deals with the setting up of professional bodies, sub-bodies and so on, but it is my understanding, for example, that in the medical profession a kind of paraprofession such as physiotherapy is, in fact, licensed through the government rather than through the College of Physicians and Surgeons of Ontario. Does anybody here know? Do you know?

Interjection: I am not familiar with--

Ms. Gigantes: I was therefore curious about your concern that if there is to be licensing, that it be done by an independent body. It seems to me that while for all kinds of traditional reasons we have dealt with professions through self-regulation and the construction of elaborate professional bodies that oversee the operation of those professions, there is more than one way to do these things. To suggest that one subsection of a set should be licensed directly by government is not to suggest that the world would have to be reborn.

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Mr. Cameron: I can respond to that. I think physiotherapists went through an extensive training and certification before they were allowed to form whichever physiotherapy act there is. I think it may very well be down the road and that we are talking 50 years from now. One of the most poignant examples that was given during our deliberations as a committee was that

muffler service used to be the mainstay of every garage and now no one gets his muffler changed at a garage.

Ms. Gigantes: I do.

Mr. Cameron: You are a traditionalist then.

Ms. Gigantes: Yes. My car is a traditionalist too.

Mr. Cameron: I think the message we are getting is that there may very well be certain items that are presently done by lawyers that can be done more expertly and more expeditiously by others on a routine basis, but at this stage we do not know that. It may very well be that like the physiotherapists, optometrists or others who are not under the college but who have a system, a set of criteria and certification and disciplinary boards of their own, that might be a very appropriate thing to do.

It is our submission that because we do not know at this stage, it is best to let the experts work it out now. I think the time could very well come when we are all having--I think this is a separate profession that we are talking about today.

Ms. Gigantes: When I hear a phrase such as, "It is better for us to let the experts work it out," I go "Aaargh."

Mr. Cameron: I can appreciate that. However, if you go to your doctor--

Ms. Gigantes: If you talk to a physiotherapist who is militantly into advancing the cause of that profession and can advance very solid reasons for the need for change in the regulation, payment and so on for physiotherapy in Ontario, you get told that there are doctors who practise physiotherapy, who get paid for doing so-called physiotherapy and who have not been trained for it.

I think the public experience is often the same in terms of seeking legal services. You go to a lawyer but the lawyer may not have enough experience in the area in which you have a need. You are not necessarily told that. You may well turn to somebody else in the community who for one reason or another has specialized knowledge in that area and get much better service.

Ms. Mossman: May I also respond to the question? When I talked about the licensing authority or the regulatory authority, I think I mentioned that we had essentially three reasons. The one that Mr. Cameron has been talking about is essentially the second one, that there is already a body that is doing it and it makes sense, for purposes of consistency and uniformity, that it should be the same one.

I think that the members of the committee in the end probably decided that this was not just the second reason, that it was the second most important reason and that the most important reason was the fact that legal services need to be independent of government. This is in fact a tradition and a history and so on. One of the questions I think one legitimately asks is, does that require continued independence? It of course relates essentially to a theory about the relationship between the state and the citizen and the legal profession as the body that is effectively providing advice with respect to rights for individual citizens.

The difficulty, especially if you are talking about the kinds of things that are in section 8 that involve individuals bringing application, in many cases, against government regulatory agencies, immigration appeal boards, provincial courts and so on, is that to have the people who are providing the advice and representation to those individuals subject to having their licences taken away by the same government that is, effectively, the opponent of the people they are acting for--you have destroyed the possibility of independent legal services for individual citizens.

Effectively, what you have done is to say, "The clients of lawyers are entitled to independent legal services, but the clients of paralegal agents are entitled to whatever we can work out between us." There really is a strong concern in the Canadian Bar Association--Ontario committee that if we are talking about the delivery of legal services, they should all be the same quality of services in terms of their independence. That reason is probably the more important reason for suggesting that whatever the regulatory authority is, it ought not to be a ministry of government.

Ms. Gigantes: When we get to the larger picture which you asked us to think about, which is how to provide access to affordable legal service for everyone in society in the future, then we begin to get into that whole question of what the relationship will be. Obviously, we are going to come up with some new notions about it.

If we think of the education system, which can fall under government, or the medical system, which in some cases can challenge government, all these same questions apply. I agree with you that the larger picture is the one we have to think about. I am not convinced that, whatever happens with this subgroup of service, which the market is now providing, it should be regulated and guided in the same way as in the past. I remain to be convinced of that, although I understand the significant point you make about the independence of the legal system.

Can I ask you about your concerns about immigration matters and the representation of people in immigration matters? Is it the case that in tribunals dealing with immigration matters the tribunals can normally decide whether somebody is a competent agent?

Ms. Mossman: As I indicated before, it is not a foolproof method, because the tribunal cannot give a test before it starts. It permits the tribunal to determine only the cases of most egregious abuse. In circumstances where somebody is very clearly incompetent, the tribunal will be able to tell that someone is clearly completely incompetent, but it will not catch the mediocre incompetents. It will catch only the really serious ones.

Ms. Gigantes: Do you know of many cases where a court or administrative tribunal has rejected either an agent or a lawyer?

Ms. Mossman: I understand that there have been some. I do not practise law, so I am not personally aware of that. I do not know whether Stephen can give you any.

Mr. Cameron: None personally. I have heard of cases of judges refusing to hear a certain person, whether it be a lawyer or an agent. The problem, of course, is the pressures of the minute. Legal training is supposed to resolve problems, not create them. I think it is perhaps the same problem with anyone who is making his first presentation to a court. Barefoot in the

Park makes a point of the thing where the guy loses his case on the first thing, but he worries all night about whether he is going to make it or not. Law students always go through that. If you talk to most lawyers, the longer they are in practice, the less they know. I think that is true of any profession.

The problem you have is that when you do put an act in place to govern, license or otherwise deal with a profession, you are still putting in an imprimatur of some merit. It is like a barber who puts up a shingle on his thing that says he has power to deal with the public.

Back to your question about whether the courts have the power, they do have the power. The judge is, in fact, in charge of the court, and there are provisions with respect to lawyers about whether a matter should be chastised or reported or subject to censure by the court. Perhaps they have that problem with respect to any person who appears in the court. Whether or not it is exercised, it is only in the rare instance, I think.

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Ms. Gigantes: Do you know of disciplinary actions undertaken against people involved in acting as agents in immigration questions?

Ms. Mossman: By the law society, I understand, yes, there have been some, but perhaps you might best address that question to the law society when it appears before you.

Ms. Gigantes: I have one further question. I am quite happy to have supplementaries.

Mr. D. R. Cooke: Do you know of any case where the Immigration Appeal Board has specifically refused to hear someone?

Ms. Mossman: In the committee, the member of my committee who was familiar with immigration practice told us about a situation in which that had happened, so I understand it did happen on at least one occasion, but I do not have any more details of it than that.

Ms. Gigantes: Would you be able to provide further detail on that?

Ms. Mossman: I can ask for it, yes.

Ms. Gigantes: That would be good.

I have one further question, and this goes back again to the large picture you talked about. I guess what we are dealing with at the current time is a new market or a market that, if not new, is certainly growing, we are told, at an enormous rate. Do you have any idea of the scope of the market that paralegal services meet?

Ms. Mossman: I think the interesting thing is that hardly anyone--perhaps Mr. O'Connor more than most people--really knows exactly what the scope of the market is. In the course of doing our report, our committee indicated its willingness to receive information from members of the CBA-O who wanted to forward information to us about paralegal operations they knew about in their communities. It was a pretty ad hoc collection of information that arrived on my desk. It is not a systematic study of who is out there, exactly what they are doing, how they are doing it and how well they are doing it. It

is very much an ad hoc system, which I can tell you suggested that people were doing incorporations, wills and divorces, that they were representing in a broad range of courts and tribunals, that they were doing separation agreements and conducting real estate transactions, appearing in registry offices and so on. It suggests that they are involved in a pretty broad range of activities, but from our point of view, it is not a systematic study by any means.

Ms. Gigantes: Where will the market take us, in your view, if we do not do anything on this matter?

Ms. Mossman: In the next six months, the next six years or what time period?

Mr. Cameron: I think the market is going fairly quickly. There is no doubt that paralegal agencies are being franchised on an incorporated basis--you are given a book of precedents--I suppose almost like H. and R. Block, and where it may be the first person who applies is the manager, the next person is the person who answers the phone and the third person is the typist. It is that kind of approach.

You ask where it is going. If it is a market approach, as I indicated earlier, I think people think they are getting things because price lists are being produced and there is an inference that because it is an advertised price it must be a reasonable fee, and they can compare it with other paralegals. The problem you are getting is there is no measure on the kind of service. Whatever is done with Bill 42, it is our submission that Bill 42 is a good first start and it is good that it has brought it to everyone's attention, but the breakdown of law jobs, of what should or should not be allowed to be done by paralegals in the public interest is upon us.

Mr. Ward: I would like to follow up on some of the points that Evelyn made, but first I would like to establish that it is a position, I take it, of the Canadian Bar Association that ultimately paralegals do have a role to play in the delivery of legal services under certain conditions as yet undefined.

Ms. Mossman: Yes, certainly the CBA-O committee came to the conclusion that it saw no reason to oppose in principle the delivery of legal services by paralegal agents, on the understanding that they would be competent.

Mr. Ward: I want to get back to the whole notion of the prerequisites that are necessary in terms of any self-regulated discipline, whatever it be. The province regulates engineers, architects and accountants and the health professions. Then, with health professions, I think Evelyn made the point that not all health professions are regulated in the same way. Not all of them are subject to the College of Physicians and Surgeons of Ontario, but every one of them is in fact subject to the Health Disciplines Act, which ensures that there is an appropriately defined scope of practice.

Although I do not have familiarity with other legislation, I am sure that the same can be said for engineers, architects and accountants, that there is a defined set of standards and criteria that have to be met. There are mechanisms to determine competence and incompetence and there is a methodology for discipline. How would you foresee all those prerequisites coming into being for a paralegal profession in Ontario?

I congratulate Terry for bringing in the bill because, let us face it, the market is running ahead of the Legislature in this whole area, but the fact remains that by passing this bill, we legitimize something without any identification of scope of practice, qualifications, discipline or whatever. How would you foresee those being met?

Mr. Cameron: In any event, I think the paralegals believe that whatever is done by the Legislature, they would be grandfathered if they were already doing it.

Mr. Ward: That is a fair statement.

Mr. Cameron: I think that is what their proposal is. But when you ask how you can do it, it goes back to first principles of defining what are the law jobs and what can be competently done by somebody who--it may be that some of the stuff that is done by paralegals is better than you would get from your average lawyer; it may be it is worse. The problem you have is there is no way to tell at this stage of the game because you are dealing with opinions. There is no right-and-wrong answer.

The problem with law as compared to engineering is that engineering is, they say, a more exact science than law. If you ask judges why they came to the conclusion they did, most judges will tell you they could probably decide the case for the other party and come up with the same number of reasons why he should have won. It is that situation you are dealing with. It is a balancing.

Mr. Ward: If I can interrupt and quote some of the jargon from the Schwartz health professions legislation review, which has been going on since 1982, you seem to be saying that the first thing to identify, that the first step is scope of practice as it relates to paralegals. Yet in all the other instances, like the physiotherapists and the dental hygienists, it has actually been the training and the education that in many ways have come first.

The college and university system seems to generate programs for new disciplines almost from the outset, and many times they are borrowed, but would you not think that an appropriate first step is the establishment, through legislation or whatever, of the appropriate training and educational methods in use so that there is a standard established?

Mr. Cameron: I think you have to have that if there is going to be a profession of paralegals because a profession by definition is united in a common discipline and educated to the task of maturing that same discipline. I think the present system is a trade system. People are selling wills because they have a word processor that can type up a will that looks like a will, that says it is a will. People sign it, but they do not know what it does.

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The danger of it to the public is, if you can make a learned decision that, "Yes, this is what I want," and it is in English and you sign it, you can draw up your own will under the laws of Ontario. Having a paralegal do it for the same price or \$10 cheaper than a lawyer would do it does not really answer the market problem. If you are going to have any paraprofessional system, like the engineers--there are certified engineering technologists who are under the engineering persons--the physiotherapists or any other specialized work, it is clearly defined, has a requirement of curricula and has a licensing component for discipline problems.

What you have in this situation is the Law Society of Upper Canada having a very complex structure, the section 50 resolution on unauthorized practice of law, to attempt--it may be that 10 years from now, if the law society were successful in all its prosecutions, we would say, "Paralegals should not technically be doing what they are doing right now." Now, we are talking about, "They are already there doing it." It is probably in breach of the Law Society Act and it is probably in breach of a whole lot of things, but it is happening and, at this stage, there is no mechanism to do it. I think that message should get out to the people of Ontario, so that--

Mr. Ward: I just do not understand. The dental hygienists, who were originally trained to assist dentists--

Ms. Gigantes: Denturists.

Mr. Ward: --after a certain course of time apply to have status as a self-regulated profession, and rightfully so. But the catalyst came from within dentistry. What I really do not understand--

Ms. Mossman: That example exists, though, in relation to the legal profession: if you look at the law clerks, the Institute of Law Clerks is a group made up of people who were providing legal services under the supervision of lawyers, who then created, among themselves, the Institute of Law Clerks and have now created the two-year training programs in community colleges from which people graduate as law clerks to work under the supervision of lawyers.

I am sure you are going to hear from them. Their submission is going to be, "If we have to take two years to be qualified to work under the supervision of a lawyer, then whatever the training program is for people who will work in an unsupervised capacity, it must be longer."

Mr. Ward: I do not want to take up much more time on this, because really all we are doing is debating. Part of the problem I see, my impression from press clippings, etc., is that so much of this is a turf battle for the customer out there. The market has already indicated that it wants paralegals and there is a place for them. Rather than be engaged so much in protection of the status quo, why not put a better effort, on the part of the bar association and the law society and everybody, to say, "We can see these things can be dealt with by others and we are prepared to make concrete recommendations in terms of how that should be constructed."

Ms. Mossman: I think that is what we are saying, too. The Canadian Bar Association is taking the position that it has no objection to the delivery of legal services by qualified people. Our position is that we do not think Bill 42 is an appropriate mechanism for achieving that and that we are willing and interested to participate in some study in order to come up with something that is much better. That is exactly our position.

Mr. Ward: You do not have an alternative, but you would like to help find one.

Ms. Mossman: Yes, that is right.

Mr. Chairman: Thank you very much for an interesting submission and for responding to the questions of the committee. You can see we are having a great deal of difficulty in coming to grips with this complicated question, within what, as I think you recognize, is a very narrow time frame. We would

appreciate your written submissions to the committee as quickly as you can possibly get them to us. We will certainly attempt to keep your comments in mind as we come to a conclusion on what we are going to do with Mr. O'Connor's proposed legislation and where we go from here with it.

I thank you for your time, and more particularly on what is recognized as being very short notice. I appreciate that you have put a lot of thought into this and that you have invested a lot of time in the question already. Your input was of invaluable assistance to the committee.

Ms. Mossman: Thank you very much.

Mr. Poirier: I move the adjournment of the committee.

Mr. Chairman: As moved by Mr. Poirier, we will adjourn until Monday following routine proceedings.

Mr. Charlton: There is nothing routine about this place.

Mr. Chairman: Absolutely. That is it.

The committee adjourned at 5:36 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PARALEGAL AGENTS ACT

MONDAY, JUNE 1, 1987

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Guindon, L. B. (Cornwall PC) for Mr. Rowe
Ramsay, D. (Timiskaming L) for Mr. D. R. Cooke

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From Ontario Paralegal Ltd.:

Nancoff, D., President

From the Law Society of Upper Canada:

Ruby, C., Chairman, Unauthorized Practice Committee
Devlin, S., Secretary, Unauthorized Practice Committee

From the Steering Committee for the Self Regulation of Immigration Paralegal Agents in Ontario:

Williams, Dr. A. M.

Forgie, K.

From the Para-Legal Practitioners of Ontario:

de Clerville, R., Chairman; Chairman, Para-Legal Association of Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 1, 1987

The committee met at 3:39 p.m. in room 228.

PARALEGAL AGENTS ACT
(continued)

Consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

Mr. Chairman: Members of the committee, we do have a full afternoon of hearings, so I would like to get under way with this afternoon's schedule.

We have one order of business that I would like to discuss with the committee members before I bring the Ontario Paralegal Ltd. organization before us for its time to make its presentation.

The clerk has received a request from Mr. de Clerville in connection with his wish to appear before the committee in regard to the paralegal bill. Mr. de Clerville has been advised that our hearings are to be concluded today and that we are going into clause-by-clause tomorrow. However, I will leave it to the members of the committee whether they wish to set the clause-by-clause back or make some other arrangements for Mr. de Clerville.

It is my understanding that there is a written, four-page presentation from Mr. de Clerville. I have not had an opportunity to see this yet, but I am advised that some of the matters relating to the presentation contained in this written submission involve the family law reform legislation that this committee dealt with at a previous time. If any of the members of the committee have read the presentation, I would certainly want to hear their views as to the applicability of that presentation to the bill we are discussing now, Bill 42.

The question is, do we hear Mr. de Clerville? As chairman, it is not my wish to turn down anyone who wants to appear before the committee, but we are literally in the 11th hour.

Mr. O'Connor: As we know, we have three presentations today, which is one more than is normal. We have already stretched the schedule, so to speak, by accommodating one extra presentation. As you have pointed out, Mr. de Clerville is not a paralegal and does not declare himself to be such, as he indicates in his four-page summary. The area of concern with which he would address us is that of family law. As you pointed out, Bill 42 is not relevant to that particular area of the law.

I know he has prepared, and he has presented to me at another time, a rather lengthy submission, a copy of which went to the Attorney General (Mr. Scott). Perhaps he should be invited to send a copy of that submission to all the members of this committee, which I am sure they would certainly take into consideration in their time when dealing with Bill 42.

Again, I would simply say that my recollection of his submission is that it does not deal with the issue and the purview of the bill before us. Unless there is some time left over after the three presentations we are to hear, there probably is not time to hear from Professor de Clerville today.

Mr. Poirier: Mr. Chairman, maybe you can enlighten me as to why we have this 11th-hour request on June 1 from such an important association. Have there been no indications before today that he wanted to meet with us?

Mr. Chairman: I turn to the clerk with respect to the first contact that was made, but it is my understanding that it did come late and that Mr. de Clerville was not advised the committee was sitting in connection with this bill. Therefore, when he heard about it, he advised the clerk immediately or as soon as he could. I suppose that still does not completely answer your question, other than that it came in late because of a communications breakdown.

Clerk of the Committee: Because of the time frame, the committee submitted lists of persons to be invited, and Mr. de Clerville was not on any of the members' lists. I contacted everyone who was on the list I received.

Mr. Poirier: All right. Through you, may I ask Mr. O'Connor whether he really is adamant about--

Mr. Chairman: Mr. O'Connor, this question is being posed to you, I believe.

Mr. O'Connor: I am sorry?

Mr. Poirier: I just wanted to know whether you were adamant about making requirements that he would appear today or tomorrow, whether Mr. de Clerville could appear tomorrow.

Mr. O'Connor: I believe we have tomorrow slated for clause-by-clause analysis of the bill, and only the one day. We are probably going to need that full day.

Mr. Poirier: Okay.

Ms. Gigantes: Is there any likelihood that there might be a few minutes left over at the end tonight?

Mr. O'Connor: That is what I suggested, that we do it if there is time at the end.

Mr. Chairman: We are not permitted to sit beyond six o'clock, which is the time of the House.

Ms. Gigantes: Why do we not just forge ahead and see how much time we have?

Mr. Chairman: I am quite prepared to do that. The last submission before us will be at five o'clock. Given their 45 minutes, which is the time frame we have allowed, that would be 5:45. That would leave 15 minutes.

Ms. Gigantes: We are starting late now.

Mr. Chairman: We have to make up some time now.

The other alternative, if I could say this to Ms. Gigantes and members of the committee without prolonging the discussion, is to put Mr. de Clerville on tomorrow at the beginning of the committee with a very tight time frame of, let us say, 30 minutes or something of that order--I know that is not

sufficient--and leave the balance of the time for clause-by-clause, recognizing that we may run into another day in any event. It is the committee's decision, but this is an alternative to trying to rush it through tonight since we are starting a little bit late.

I have not spoken to Mr. de Clerville personally, so I do not know whether tomorrow at 3:30 p.m. will be convenient to him.

Mr. O'Connor: Are we limited to tomorrow for clause-by-clause?

Mr. Chairman: No. I think it is the committee's decision. I do not know of any reason that we cannot continue on with clause-by-clause the following week.

Ms. Gisantes: Yes, because we accepted another schedule to begin with. Why do we not see how much time we have today and if we can just put in that presentation today? If we cannot, let us make a decision then rather than wasting more time now.

Mr. Chairman: Okay. I just wanted to clear it up. If you want to leave it that way and see how we proceed today--and if the members of the committee exercise judgement in their questions and in their oratorical splendour, which they are noted for on so frequent occasions--we will get moving right along.

Mr. de Clerville, it is my understanding that we will try to get you on the agenda tonight for even a limited period of time. Are you able to stay then?

Mr. de Clerville: Yes, indeed.

Mr. Chairman: Okay. It will be brief but it will be better than not appearing at all.

I would like to call forward David Nancoff, who is the president of Ontario Paralegal Ltd. Mr. Nancoff, welcome to our committee. Could you introduce your guest.

ONTARIO PARALEGAL LTD.

Mr. Nancoff: On my left I have with me the vice-president of Ontario Paralegal Ltd., Herb Hohn.

I will commence by giving a couple of notes about Ontario Paralegal. We are the largest paralegal firm in Ontario, with more than 60 offices in the province. We have an office in virtually every city in Ontario. We address the offices as being licensees, not franchises, but for the sake of this arrangement I guess it could be interpreted as the same.

We recognize that each office has to be properly trained and operate on its own, but we also feel there are certain advantages in our company situation in the paralegal profession. Our situation offers some benefits, especially in the area of training and in supervisory areas.

For instance, all offices are trained by us, and the training is done by lawyers and by trustees. I will just mention that one of the predominant areas in which our company specializes is financial problems and debtor

rehabilitation, so we have trustees who train our people. We also even have a provincial court judge who trains and addresses our people.

Approximately twice a month we meet with all our offices from all over Ontario. We provide generally, as I said, two sessions a months or about 16 hours of training every month, in which we update and go over discussions from the client coming in the door to actually updating new laws.

For instance, just recently the Change of Name Act was changed and was taken out of the courts. It just requires an application now; it is no longer a court situation. These types of examples are the things we do to update our various licensees.

We have various support staff whom an individual licensee can call upon. If a licensee has any questions or needs advice, he can call on these people at any time he wishes and get an answer.

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Also, if there is a complaint from an individual consumer calling our head office, which happens very seldom, by calling us, there is a way that we handle a complaint and therefore resolve the problem with the consumer and resolve the situation.

Before our offices are opened, they have complete training by us by some of the people I mentioned previously. They open their office with complete supervision. Every type of work they do crosses our specialists' desk so that we can review it and make sure everything is correct.

Our company's efforts in the last week have been generally funnelled into putting together the submission which will be given out tomorrow. It is a rather lengthy submission, and we have put most of our efforts into that area, into generating this submission for the Paralegal Association of Ontario, of which I hold the position of vice-president and a second position of director of small claims.

One thing I want to stipulate or suggest is that, basically, we have found the consumer really wants our services. That, I feel, is the bottom line. They seem to be allowed to do certain things on their own, but the next jump for a routine legal matter is a lawyer.

In a lot of the areas we deal in, which are financial problems, the last place a person who is overcommitted would even think about going is to a lawyer. We provide complete budgeting services and we stop most legal action that is against them. We arrange it so there is a monthly payment they can afford and can get out of the problem area they are faced with. This is an area that perhaps lawyers should be more involved in, but economically it might prove difficult. A person who comes with financial problems can generally not afford the fees a lawyer would economically have to charge. We fill this void by the fact that our fees are extremely lower, and we are able to help these people in resolving their particular financial difficulties.

In various areas, I would have to say there is very little abuse, not just by our people but by any paralegal I have met. They are all very conscientious and responsible individuals. A paralegal virtually has to be a little bit more of a social worker than a lawyer is. We take the concerns of the person and we work through his problems. If he has a garnishee on him, we would go and try to arrange to get it lifted right away. A lawyer in this

function can certainly do this, but it is a routine matter, and the price he has to charge to make it worth while would be prohibitive. Therefore, we serve this area where there are people who are working and have jobs and cannot get legal aid, yet cannot afford the price of a lawyer in these areas.

One of the reasons we operate so substantially in this area is that in the rest of the provinces, other than Quebec and Ontario, they have what they call the orderly payment of debts under the Bankruptcy Act. That act is not in force in Ontario and therefore there is no credit relief for these people other than bankruptcy. So we try to help the debtor, generally under consumer proposals that go under the Bankruptcy Act.

This area is seldom even taught to the lawyers. In fact, from all the trustees I have spoken with, it seems they are told about it at the end of their course and it is never proceeded on. Lawyers do not even implement it. I have met very few lawyers who totally understand this. In fact, I have explained it to them many times. I have yet to find even one who really knows about it.

The other point I want to make as far as lawyers go is that we do not want any point of confrontation whatsoever. We want to work with them. In our offices, if any problem is not a routine position, they are referred to a lawyer in all cases. We want to work with them. I think the lawyers who have received our referrals and who have got to know us would have to agree at this point that we do try to refer any of these areas to them.

In reverse, I receive calls from lawyers throughout Ontario. I got one just the other day from St. Catharines. A lawyer called and asked, "Do you have an office near the Scarborough small claims court?" Because of our network, I was able to refer him to our office and whatever deed had to be done on behalf of that lawyer went ahead.

Our position is one of nonconfrontation and working with them. We have tried to approach the Law Society of Upper Canada on that basis; basically talking and finding an area where we can work together. When I have made that call to them, my answer from the spokesman of the organization is "Yes, you can come down here and I will have a witness in my office and then we will charge you after we have taken it all down." I called just as a courtesy.

With respect to the Law Society of Upper Canada, I think at times it creates some confrontation that I think is unnecessary. We have tried to work with them in a couple of methods or to see an area where we can, and yet the rhetoric that comes out in the press such as, "We will prosecute the hell out of them," items such as this are just not becoming of their profession.

I would also basically say to you that the bottom line I find in that particular area of the consumer coming to us is that the consumer wants it. He feels that he needs an inexpensive system and he finds more of a personal reception at times. For instance, a man or woman who makes only \$5 an hour or something such as that on a 40-hour week, grossing \$200, comes out of it with a net pay of \$180 or something such as that. If he is to go and process a divorce or something like that, that is a complete month of his salary gone, even through our basic services. To pay the expenses of a routine divorce or some other routine legal matter is unnecessary.

We support Bill 42 with some modifications. Basically, our points are made in the submission from the Paralegal Association of Ontario, but in a nutshell we want to have a situation of an organization set up where there is

an immediate registry and monitoring of all paralegals in Ontario. The Paralegal Association of Ontario, to which about 95 per cent of all independent paralegals in Ontario belong, has a complete list of members from Thunder Bay to Niagara Falls. That could be turned over and you would immediately have a monitoring system and they would have to register before they practised.

We also feel there should be an advisory board or task force, whichever name you want to apply. They would have a two-year mandate in which they could basically go and do the lines of demarcation and outline the fields of practice. They would report to the Attorney General's office as the Paralegal Association of Ontario would and there would be a third year at an option of the Lieutenant Governor in Council.

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Basically, the advisory task force would cover the various areas of demarcation and we feel that small claims and traffic could go through immediately with language to leave open these other fields where paralegals are dominantly practising today. We should be able to operate without the law society invoking section 50 of the Law Society Act. Section 50 of the Law Society Act should still be there, but it cannot be invoked without the Attorney General's informed consent. They would still be able to prosecute under that, but the Attorney General's department should have to give consent.

There is a precedent in this case. In 1980, Roy McMurtry, the Attorney General at the time, had a report of the professional organizations committee which recommended just what I am saying: that this particular section not be invoked without the consent of the Attorney General's office.

One other point I would like to make is with respect to complaints from the public. To my mind and in my experience, we have not had many complaints from the public. The law society has suggested that there are a number of them. I can only suggest to you that all the complaints to the Paralegal Association of Ontario cross my desk and we have not had any more than one that I can think of, and even that was a debatable one.

I feel the public is being protected and the complaints the society gets are being solicited. They suggest to lawyers who deal with paralegals that they should immediately contact them and give them the details, but in general as we can see it, the public wants it. They are getting inexpensive legal services for routine legal services that do not require advice. They can walk into any bookstore and pick up a kit or something that talks about how to incorporate on their own, how to divorce on their own. They get more legal advice in these books than any paralegal would ever give.

I would also submit that an example in the accounting profession is that an H and R Block office gives more advice on a tax return than a paralegal gives in just filling out a form.

In general, we support Bill 42 with its modifications and, as I said, you will see it in the paralegal association submission. Thank you.

Ms. Gigantes: Could I ask you, Mr. Nancoff, was your firm the firm that ran an ad recently in the Sioux Star that reads as follows: "Paralegal firm requires partner for expansion"?

Mr. Nancoff: Yes, that is correct.

Ms. Gigantes: In the ad it says "Complete training provided, including sessions at Osgoode Hall Law School."

Mr. Nancoff: Yes. If you recall, I mentioned that we had various support training sessions. Just in March, for example, all of our offices attended Osgoode Hall Law School at York University for three sessions that were specifically under the small claims court. All offices attended that.

Ms. Gigantes: Who was providing the training?

Mr. Nancoff: Judge Marvin Zuker was the trainer.

Ms. Gigantes: Can I ask you how many outlets your firm has?

Mr. Nancoff: Yes, 60 outlets in the province. We are virtually in every city in the province.

Ms. Gigantes: How old is the firm?

Mr. Nancoff: Approximately a year. I hesitated because originally, when we began, I opened as myself and we eventually grew and at that time I changed the name, so it has been Ontario Paralegal Limited for one year.

Ms. Gigantes: How long have you been active as a paralegal agent?

Mr. Nancoff: Since about 1984 but I would also mention, going back to 1968, I did my first of what they call consolidation orders. Consolidation orders are used where a person has financial problems and judgements against him. That is how I actually began, in doing that. I still do consolidation work.

Ms. Gigantes: You act as the receiver of complaints on behalf of the association.

Mr. Nancoff: Yes, I do.

Ms. Gigantes: What is done with a complaint?

Mr. Nancoff: We have had so few. As soon as a complaint crosses my desk, I phone the person and, first of all, try to see exactly what the complaint is, establish what it is and get it corrected. Ironically, the complaints I get are generally for companies that are not members of the Paralegal Association of Ontario, but we act on them anyway. We will refer them to one of our offices and generally fulfil whatever was not done. If a person has even the slightest hint of a complaint, we try to satisfy him immediately.

Ms. Gigantes: If I were a client of one of your outlets, how would I know to get in touch with the association?

Mr. Nancoff: All our offices carry the certificate of the Paralegal Association of Ontario. We are in the phone book. When we have our general meetings--which we have had, generally, once a month--they are published in the newspaper with the phone number. We try to keep the association's name up front so that the public knows about it as much as possible and can contact us. We have had various other areas of advertising and getting the word across, but that is how we do it.

Ms. Gigantes: If I went to you for what you call a--was it a simple divorce?

Mr. Nancoff: Uncontested divorce.

Ms. Gigantes: Uncontested divorce. I think you used the word "simple" or a word like that.

Mr. Nancoff: I am sorry; I meant uncontested.

Ms. Gigantes: How much would I get charged for a simple divorce?

Mr. Nancoff: The total, with all the court costs and all that, is approximately \$400. Basically defining it a little more, the paralegal doing it would get approximately \$200 in fees for himself. That is an average of not just ourselves but also companies throughout Ontario. That is generally the rate.

Mr. O'Connor: Dealing specifically with the bill that is before us, can I ask you some questions about your activities in the area the bill deals with, specifically provincial offences court? Do you go into provincial offences court and do highway traffic stuff?

Mr. Nancoff: Our company does not do the Highway Traffic Act at all.

Mr. O'Connor: Landlord and tenant matters?

Mr. Nancoff: We are just about to start getting into that. In fact, our training in that area begins for our offices on June 20.

Mr. O'Connor: Coroner's inquests?

Mr. Nancoff: Not presently.

Mr. O'Connor: Immigration matters?

Mr. Nancoff: Not presently.

Mr. O'Connor: You do go into small claims court with the consolidation orders, as you have indicated.

Mr. Nancoff: Yes.

Mr. O'Connor: Your real interest in this bill is with respect to that one section.

Mr. Nancoff: Correct.

Mr. O'Connor: I know you do a lot of other things which are not included in the bill and are anticipated to be included in the bill.

Mr. Nancoff: Small claims is certainly an area. Part of the problem of just saying small claims is that today in Ontario small claims is restricted to \$1,000 and under for all of Ontario except Toronto, where it is \$3,000. Due to claims being higher over the years, what happens is that we have found it is difficult for us to operate in cities other than Toronto. Claims for virtually anything are getting into the above-\$1,000 mark all the time. I understand that is to be changed, but that is the problem, because

once it shifts into district court, more than \$1,000, it says right on the claim forms in Ontario that a lawyer must proceed on it. Therefore, we cannot act for an amount of \$1,500 in Chatham but we can go twice that amount in Toronto.

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The Acting Chairman (Mr. Poirier): Are there any more questions from the members? If not, I thank you very much for your thoughts.

Will the Law Society of Upper Canada come forward, please? Is anybody having any problems hearing with the air-conditioner on? If so, we can either speak louder or turn it off.

Mr. Polsinelli: Mr. Chairman, I would like to say that I hear quite well with the air-conditioner on. Thank you.

The Acting Chairman: Good. Thank you. Mr. Ruby, I presume.

THE LAW SOCIETY OF UPPER CANADA

Mr. Ruby: I am Clayton Ruby, chairman of the law society's unauthorized practice committee. I have been asked to come to assist you today by making a presentation and answering questions and I am pleased to do that. I have brought with me Shaun Devlin, a young barrister. Mr. Devlin is secretary to the law society, one of a number of secretaries, but he is particularly of interest because his specialty within the law society is what we call unauthorized practice and what you would call paralegals. Between us, we hope we will be able to assist you by answering questions.

Let me spend two or three minutes just at the outset to explain the brief you have in writing. I am not going to take you through it because I know you read vast quantities of material.

The Acting Chairman: Are you aware you have about 45 minutes?

Mr. Ruby: Mr. Chairman, unless you direct me otherwise, I would prefer to spend the time with questions. I want to try to deal with your concerns rather than our concerns.

The Acting Chairman: Fair enough.

Mr. Ruby: Our concerns are set out in the paper. I think what we have tried to do is set out a framework for the discussion in a broad way. We wanted to canvass which areas paralegals were operating in and what the problems were in those areas, each item by each item. We drew upon our experience as lawyers and the experience of the lawyers in the law society group; we consulted with others, with judges and with laypersons; we analysed the kinds of complaints we have been getting to try to present what the difficulties were and the areas where there were relatively few difficulties.

Understand our position: we think lawyers do it best; not unexpected, I am sure.

Having said that, it does not mean there is no role for paralegals because there may not be any, or any significant danger to the public in some areas. In those areas where alternate methods--forget whether they are cheaper--can be provided, we are not going to object to that. But it is

important to delineate the areas and the problems and to try to understand what kind of education and regulatory schemes might be put in place to try to deal with paralegals if you decide on opening up the areas.

With that, we can list the areas, and we looked at them. We kept in mind as best we could with our own limited perspective, which is a lawyer's perspective, a certain kind of training and experience, that the logic of this was to protect the public and to deal with public concerns. Quite frankly, lawyers will be fine no matter what you do; we are not going to get hurt by anything that happens in this area. The first law of cultural dynamics as far as I am concerned is: sooner or later it makes more work for the lawyers. That is what will happen here, inevitably.

With that as the basic understanding, the problem is not us. We are not a problem for anybody. The problem is: how do we make available alternate means of providing some kinds of legal services, if possible, while at the same time protecting the public and making life better for them? That is the object.

Accordingly, we outlined some areas where we think there is relatively low risk. You will find that on page 2 of the summary in the beginning.

Highway Traffic Act matters: that is now covered by the POINTTS appeal. We would restrict that to areas where there are no significant consequences; POINTTS does not. Even where the six-month jail penalty could be applied, the agency language of that statute and the POINTTS decision mean that paralegals can go and can charge money in those areas.

Provincial court, civil division: by and large, paralegals have been carrying on there quite satisfactorily. They have been doing so for a relatively small clientele because the average person being sued does not call a paralegal. But there is a large number of people who do suing, usually in great chunks, who use paralegals, and they are sophisticated consumers. So we do not see a problem at present; until there is a problem, there is no point in trying to get excited about it.

Administrative tribunals: certain of them. In fact, there are many hundreds of administrative tribunals, and we do not see a danger in most of them because most of them have specialized clientele, knowledgeable consumers. We do not think it is appropriate to have paralegals appear before immigration tribunals--there is a limited constitutional mandate there having to do with the advice aspect and not the appearance problem--and unemployment insurance and workers' compensation tribunals. In part, this is because in those areas there is already in place a sophisticated, well-trained free service through clinics and MPPs' offices. Where the ordinary person can find services that are available free or at low cost, we see no reason why charges should be made for them or why we should be encouraging anyone in that area, lawyers or anyone else.

Last, in labour relations matters, we have again a sophisticated consumer. The system works very well right now. People know what they are getting. They are capable of evaluating the services and the quality. We see no reason why we should worry about it. It always assumes there is some kind of regulation process. We set out in great detail in the latter part of our paper the kinds of regulation that need to be done.

With that as the understanding of our position, we are here to help you. Can we do so?

Mr. O'Connor: Welcome, Mr. Ruby and Mr. Devlin. As you know, I have been involved with this issue for some considerable time. You kindly forwarded to me a copy of your brief, I think coincidentally with presenting it to the Attorney General (Mr. Scott). I appreciate that. I have had the opportunity to read it thoroughly twice now in preparation for these hearings.

I might make a comment by way of a sidebar. You comment that your primary interest, or our primary interest in that I am also a lawyer, and that of the Law Society of Upper Canada is the protection of the public in these things. Unfortunately, as you well know, there is a perception among the general public that the primary interest we or the law society has in opposing paralegals is the protection of the law society, its lawyers and members and not necessarily the best interests of the public. I think there is a public relations job to be done by the law society in disabusing the public that the law society is out to protect lawyers and to see that they line their pockets and that it has less interest in the public than it should have in these matters. I make that by way of comment. You are probably well aware of it and I just make it for the record.

I am considerably encouraged by the report of the law society as it deals with paralegals. It is much better than I could ever articulate or set down in a report. It sets out the basic feelings and thoughts that I have on the whole subject--feelings and thoughts that prompted me to become involved in the drafting of Bill 42. We seem to agree that there is a difficulty of unauthorized or unsupervised practitioners presenting a difficulty to the public, presenting a danger, a hazard, to the public because of the lack of supervision, the lack of education and the lack of certification, the danger of their inadvertently or in some cases advertently abusing the public trust and presenting a service for which they are not qualified or taking money that they thereafter have no requirement to maintain in a trust account or account to their clients for.

There is that real danger with this burgeoning area of a new industry, a new profession, if you will, called paralegals. I therefore set out to draft the bill that I did and you set out to deal with the matter in the report that you did. I am encouraged because I think we are ad idem on a number of important points, particularly with regard to the areas that are included in the bill. They seem to be generally the same areas you suggest should be left to paralegals, but should be left to supervised paralegals. I think what you are suggesting is some kind of legislation similar to Bill 42 that would govern the education, certification, regulation, disciplining and so forth of paralegals in the areas you mentioned on page 2. We do not see eye to eye entirely on those areas, but we are close.

One significant area where I think the bill differs from your approach to the whole problem is that of a governing body. The bill suggests that the governing body should be a committee of the Law Society of Upper Canada. Frankly, the rationale behind that on my part was, who better to govern the semi-legal profession than the law society, which has been doing it in Ontario for 145 years, 165 years or whatever? Similarly, it would permit us to tap into the discipline proceedings under the Law Society Act, section 34 and so forth, as an in-place and already established method of providing discipline to the paralegal industry.

set it out in the brief--and I think some of us have not had the opportunity to read it--perhaps you could just provide the rationale for that treatment, rather than the in-place and, in my mind, logical treatment of the law society doing that job.

Mr. Ruby: Let me first say that this is an issue which caused us a great deal of difficulty at convocation. We debated it for quite a long time.

Mr. O'Connor: May I just interrupt for one second? I am very sorry. You are probably aware that the Canadian Bar Association--Ontario has dealt with this issue in its report and suggested that the governing body should be the Law Society of Upper Canada. Maybe you can bring that into your thoughts.

Mr. Ruby: Sure. We were not uniform on it. We debated it and we are keenly aware that there is more than one perspective you can take on that issue.

Ultimately, the view that carried the day at convocation was that if we attempted to carry out the regulatory role on behalf of government, essentially there would inevitably be assertions, we hope well-founded, that we were in a conflict-of-interest position and that the lawyers' economic interest would be aided by keeping paralegals down. I hope that is not so, but we saw no reason we should enter into that arena and expose ourselves to that difficulty. We thought it better to leave it to others.

I think the Canadian Bar Association takes the view that you took. It is a powerful argument. It says, "We are the only people who have experience in doing this kind of thing in this area." I am not prepared to say that if this committee called upon us to do so, convocation would say no to that. I would certainly take it back to convocation, we would debate it again and we would give great weight to a request from the Legislature through this committee or from the Attorney General.

There is a third alternative, which you may not have thought about and which I want to raise at least in passing, and it is this: Assuming that what we are talking about is allowing paralegals, under some kind of supervision, to practise before various tribunals or courts at some level, you could pass the regulatory function over to the tribunal that was doing the actual hearing.

For example, if you want to appear in front of provincial court (civil division), you would have to be on a registry established by that court. The judges of that court would have to have an absolute discretion--because you could not have them having hearings and stuff like that--to take you off the registry if they got too many complaints or did not like the way in which you were operating in that court. The rationale for that would be that they are the ones who have seen you in action and they are the ones who know best how you are doing.

It is a limited regulatory function, because it does not cover all the other aspects which presumably government will want to cover about requiring insurance of some kind and training, sending them off to school so that they learn things. That is one possible component of a scheme you might consider.

Having said that, it is a difficult point. I do not want you to think for a moment that because we have taken a position on it, we do not see the other side; we do.

Mr. O'Connor: In the brief, because it was directed to the Attorney General and it was not dealing specifically with Bill 42, you have not

directly dealt with the provisions or even the general principle of Bill 42. Can the law society comment on whether it feels this legislation should proceed in its limited scope of dealing with the limited areas it does deal with, perhaps with amendments to fit your list on page 2?

Mr. Ruby: We would not object if the committee went ahead with a limited regulatory scheme at the moment. Particular details of Bill 42 could do with some reworking in some areas. We share the view of the county and district presidents, for example, expressed to you the other day, that at the moment it seems open-ended. We think it ought not to be. It would not be a matter for objection from us if certain very narrow areas were picked, we tried them out and put in place a regulatory scheme to see how it works. We would look at it again in a few years and see whether it is safe to expand it or whether we have to cut back on it.

Mr. O'Connor: We are being met with the argument that this paralegal situation is significantly bigger than Bill 42. It is a whole range of new and different services that are burgeoning out of control and we ought not deal with it piecemeal. We ought not deal with just what is set out in Bill 42 without a comprehensive, multi-year study of the whole area. This is the argument that is coming from some sources, including those in the Attorney General's office. We should deal with the whole thing as a comprehensive matter to determine the lines of demarcation and to determine all the larger questions that are posed by nonlegal and unsupervised persons delving into areas of wills, corporations and these other areas that are not dealt with by the bill.

My rationale, of course, is that paralegals are already permitted and prescribed by law to appear in the various tribunals that are set out in section 8, in that the governing statutes of those tribunals provide that agents may appear in those courts. So far, agents have been defined in the courts, in the POINTTS case, to include unsupervised paralegals for a fee. If the POINTTS decision of the Court of Appeal stands up--I am not sure that it is going to go any higher--

Mr. Ruby: It is not.

Mr. O'Connor: It is not? Then it is the final decision. If that is the final decision in the area, should we not proceed in the areas we know are already legitimate for these people to practise--in that they are practising in these courts, but they are unsupervised, unregulated and uneducated; there is no provision for errors or omissions insurance, there is no provision for discipline procedure when they commit errors and that sort of thing--get that behind us so that we can then launch into dealing with the much larger areas that have been put to us?

Mr. Ruby: It is the view of convocation that there are some areas where it is now quite clear that no significant harm is going to be caused, provided there is a regulatory scheme. We have no objection if you go ahead and move in that area now.

There are other areas, beyond a doubt, where the issue becomes very complex and very difficult, whether you can safely carve off some aspects of nontribunal work and let paralegals do them. For that, you would need more study, beyond a doubt. We would not for a moment think that this, although it is our best effort, is the last word in this field; it is not. Further study would no doubt be helpful in many ways. We do think that in these areas now we have identified are areas where there could not be an objection if the proceedings were taken.

Mr. O'Connor: Just one last point, if I may. There is a difficulty that is starting to arise, for instance, which would be stopped by Bill 42. I cite as an example a man named Eugene Trasewick, a former lawyer who was disbarred by the Law Society of Upper Canada, who is practising as a paralegal in St. Catharines. It was brought to my attention by my colleague the member for Brock (Mr. Partington), who is from that area.

He calls himself Hyatt Legal Services. He is carrying on a flourishing practice, while being a disbarred lawyer and, I believe, having a criminal record, if I am not mistaken in that regard. Do you not feel that is of some danger to the public and should be stopped?

Mr. Ruby: Those guys are like a red flag. I am not prepared to say that in no circumstances should a second chance be given. When we have someone who has been disbarred for dishonesty in dealing with his clients, I think you would think twice before giving him a chance to do that again.

Mr. O'Connor: Involving millions of dollars.

Mr. Ruby: Millions of dollars. It is a very sad thing in terms of the social costs, when that kind of breach by a lawyer takes place. When it does, we have the machinery in place to see that it is dealt with and to provide some compensation to the people who are harmed. The Legislature over the years has allowed us to fulfil that function and we do that fairly well, but at the moment there is just nothing that can be done by anyone and it is a very serious problem. It is one that we have discussed with the Attorney General.

Mr. Devlin: Mr. O'Connor, if I might just follow up on that, the incident you are raising to the committee is not an isolated incident. In fact, with Mr. Trasewick in St. Catharines, there is one more disbarred lawyer who is practising with him. Their third partner in that organization is Carlo Montemurro, who was convicted in the Astra Trust affair and was sentenced to six years in jail for defrauding the public. All three of those people are the directing mind behind that one organization. The society has information that there are other disbarred lawyers in other locations, as well, doing agents' work.

Mr. O'Connor: For the committee's sake--you gentlemen perhaps realize it--that if Bill 42 were in place, or something similar to it, that would not be permitted. Section 4 would bar those guys from practising as paralegals.

Mr. Devlin: That is correct.

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Ms. Gigantes: Since its October brief, has the law society changed its position on how paralegals should be regulated? If I read correctly what you are talking about on page 60, you are suggesting that the Ministry of Consumer and Commercial Relations should supervise competence and ethics.

Mr. Ruby: No. We still take that position, but because of the different positions taken by other groups and people, we are keenly aware that there are other perspectives you can take. We think it is best to have government do it. I raised the possibility of having the tribunals themselves play a role in it as well, but, no, we still think that government is the best. If you decided to ask us to take another look at it, with a view to our taking part, we would look at it very carefully.

Ms. Gigantes: Could you give us some general sense of the complaints that have been received by the law society concerning paralegal activities?

Mr. Ruby: Shaun, you took them directly. Why do you not deal with it?

Mr. Devlin: I can. There are a lot of different kinds of complaints we get at the society from a lot of different sources. Recently, we have put together some information giving a cross-section of these complaints. We get complaints from judges, and they are complaining about the competence of people appearing before them and they are complaining about the honesty. In some of those cases, they have referred the matters not only to the law society but also to the Attorney General for prosecution.

We get complaints from the court offices saying the people are not doing the work properly and cannot be providing proper services to the clients because they are not even doing the proper work in filing the documents. We get complaints from crown law officers who say that some of the people coming into court to appear in the defence of some of these people are not doing a proper job or are not reliable.

Then we get a lot of complaints from customers. We get complaints from customers of a large number of paralegal organizations; there is a great cross-section. We do not have numbers for this fiscal year, but we get an awful lot of complaints, and they are all unsolicited because, unlike with lawyers, there is nothing we can do for the people; we cannot work with the lawyer to resolve the complaint or compensate the person if money has been taken dishonestly or if errors have caused financial loss.

The types of complaints we get from customers range from "I gave them money. I got no services. I cannot contact the person. My date is coming up for court. What am I going to do? It is going to cost me double the money to go to someone else" on to complaints of actually being lied to, money being taken from quasi-trust accounts by these people--a whole range of complaints, which I guess are similar to complaints received by people representing the public in lots of areas, but there are a lot of complaints.

Ms. Gigantes: Do you have any sense that the people who are complaining to you, as clients, have gone to the Para-Legal Association of Ontario?

Mr. Devlin: No. I do not. I had only very briefly heard once before that there was a complaint mechanism. As far as I know, none of the people who have ever complained to me at the society, either in writing or by telephone, has ever complained to the Para-Legal Association of Ontario or discussed with me his knowledge there was even such a process. No one has ever told me he has been advised of a complaints process when he has gone to see these people.

Mr. Gigantes: I do not think I have ever met anybody, of all the people I have met dissatisfied with lawyers' services, who said he was advised in a lawyer's office to go to the law society either.

Mr. Devlin: I think that is correct.

Ms. Gigantes: The market is really what has us in a quandary. Obviously if we are looking at expansion of outlets of service at the rate that was described by our previous submission, we are dealing with a market which you could call out of control or you could call it a growth market, depending on your point of view.

Mr. Devlin: I can speak about that a bit to you, and maybe this information will be helpful.

We got a lot of complaints from people who have called in response to similar advertisements to those, mostly from that organization, and the people have called to ask: "What is the society's position on this? What information can you give me about this?" In general, the information I have learned about that is that it costs \$15,000 to buy the franchise. After you buy the franchise, you then pay Mr. Nanoff's association another 10 per cent of your gross profit on top of that and you receive your training, whatever level of training is given.

The people who are responding to those advertisements--at least the ones calling me--for the most part do not have any legal training. They are people who are looking for investments. They are looking for some sort of business to get into. It is one thing they are considering along with buying a grocery store, for example, in one case. But the possibility of a profit, as there is profit supposedly guaranteed in that advertisement--

Ms. Gigantes: "Earnings," it says.

Mr. Devlin: Earnings. I am sorry. There are earnings guaranteed in that advertisement.

Mr. Ruby: Not just earnings: \$80,000 a year, which is what focuses my mind acutely on the problem.

Mr. Devlin: I am told there has been talk about profit in the discussions that follow these advertisements, and there are profit figures discussed back and forth.

In any event, I think it is the profit motive that is motivating these people to take that opportunity. It is growing very quickly with this organization and some other franchises as well, and that is why.

Ms. Gigantes: We are all motivated by earning a living.

Mr. Devlin: That is correct.

Ms. Gigantes: If a lawyer in Ontario were presented with whatever is known as a simple divorce, what would the charge to the client be?

Mr. Devlin: I have never made a study of it and it varies greatly. It varies from the young lawyer who sets up an office on his or her own and charges a low fee starting out in business, and it ranges on up through the sizes of the firms and how much work is involved.

It is in some cases very difficult to have a "simple" divorce. In a lot of the cases I see about paralegals, for example, questions are asked of the paralegal. It seems that paralegals do not charge any more for giving that information, but they give the information. So questions are asked such as: "Who gets the benefit of the registered retirement savings plan? Can I get support for my kids? How long does that last? Does it last after I go to work? Does it last if I have a new relationship?" Those kinds of things. None of that is billed for.

In some cases, a lawyer will bill for that advice because there is care taken in giving that advice and it is seen as more than a "simple" divorce.

There is a big range between a divorce going through with all things arranged, and something being uncontested. A lot of times there is a wide spectrum in between, and when people get advice, then they decide.

Having said that, I think the fees go down as low as less than \$200; I do not know how much less than \$200. That is aside from the disbursements which would bring it up, as I understand, to around the figure Mr. Nanoff is talking about. I think the prices go as low as that and they go higher depending on the complexity of the matter and the experience of the lawyer.

Mr. Gigantes: Could you offer us any general thoughts about whether we should be regulating this area at all? I am just curious about why we should get into regulation at this stage, when we have a market that is establishing itself. We can decide as a society either to get into prepaid legal services or to let the market go. Will not people in Ontario find out whether paralegal firms are offering decent service?

Mr. Ruby: At the moment, there is a great deal of heat being generated by the profits being earned by these firms with lots of outlets because what they are making the money on, I suspect, in part at least, is the franchising operation rather than the actual operation of offices. Whether there is any real demand beyond those organizations themselves is a real question in my mind.

But we do have to go with the POINTTS decision. POINTTS says you can charge fees to act as an agent in any statute which allows agents to appear before a tribunal. There are hundreds of tribunals in Ontario. There is not a problem with those major ones at the moment, but there may well be in some of them.

That is the area where I think it might be advantageous. Once you go beyond that into the other areas like divorce, incorporation and tax advice, POINTTS does not apply at all. It has nothing to do with the issue. The question is, is there any social interest in legislating this area? I cannot see it at the moment, but that does not mean it might not arise.

The only area where there is any kind of press at all is the area covered by the POINTTS decision, as I think Mr. O'Connor pointed out in his question. You could decide to wait for a couple of years and see what happens, see how it sorts itself out.

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There are some problems being caused. In the areas outside the POINTTS decision, where legal advice is being given in other areas, we are prosecuting under the Law Society Act, so we have it under control or we will have it under control. It is a constant problem. We are always behind, and there are always new people acting and giving advice, usually without competence and training, but there is a mechanism in place for dealing with that.

The only thing that I see as a problem for you is the tribunal area. Most of these tribunals are not problems. They are effectively self-regulating. But some of them, such as small claims court, could become a problem with ordinary citizens, as opposed to sophisticated consumers, who start hiring paralegals and find they are not competently trained or qualified. In the area of highway traffic at the moment--summary conviction criminal--there could be areas there that are difficult.

Is it another thing that I think is really pressing? Not at the moment. I see potential problems, but not at the moment.

Ms. Gigantes: On the whole, if you were to give your personal feeling about it, you would say, "Let it go for a while."

Mr. Ruby: I hate to answer that question. That is your problem. I can simply say it is--

Ms. Gigantes: I am looking for advice.

Mr. Ruby: In terms of the pressing need for the public, it is not on a par with many other areas you have to concern yourself with. On the other hand, I can see potential for difficulty.

Ms. Gigantes: Thank you very much.

Mr. Chairman: Thank you, Mr. Devlin and Mr. Ruby. I want to compliment you on the summary in your brief. You have made a valiant attempt to put some parameters around the limitations we are having some difficulty with, admittedly, on this committee.

I missed the first part of your presentation--I am sorry, I had to leave for a quick interview and I was just able to come back--so this may have been discussed. If it has been, forgive me. I gather you are in favour of some form of control as suggested in Bill 42. You may not like Bill 42 in its present form or you may not be completely satisfied with it, but have the members of the committee canvassed with you some of the specific areas you may wish to deal with in Bill 42 if we have that legislation placed before us?

Your summary, of course, can be superimposed above Bill 42. We can look at that in its detail. One of the areas I am particularly pleased about is on page 2 in your summary, where you do indicate those limitations on areas of service that you feel would be appropriate. Have you dealt in specific detail with Bill 42, or do you wish to make any comments in relation to that bill?

If it went through in its present form, without modification or amendment, would that be of help to you, or would you consider that to be just complicating an already difficult situation?

Mr. Ruby: It really cannot go through in its present form. I think it needs some work. The basic idea of a regulatory structure is one we approve of. We think the areas have to be delineated very carefully and the legislation not left open-ended, and that has been said to you by others. In our view, it would be wrong to allow paralegals, unsupervised by anyone, to continue in a large number of areas.

It does not mean you could not say, for example, "We will let them go on in small claims court," or "We will let them go on in provincial offences court, and we will not let them do other areas. We will see how it goes in that area," or "We are not going regulate at all." That is a possibility. I do not want to foreclose it.

But the minute you start going into more than one or two areas where we have a history of safe conduct, as it were, and, with the regulations, the method to go--give it merit enough, you do not need regulation. You can do without it. You can just say they can practise in these areas if they are approved by the judges or the tribunal.

Let us say in small claims court, for example, You have a good track record. You would have to register to be allowed to practise in that area, and the judge could take your name off the list any time he felt like it without cause, because you cannot have him having hearings. He would not have time to do hearings.

That could work if that was the only area, for example, or they are very narrow areas. But the minute you have more than a few areas--two or three areas or tribunals they are going to be practising in front of--you probably have to go farther and provide a large regulatory mechanism. It is cumbersome, and if I see where you are directed, I think you are trying to say, "How can we do this without building in a large bureaucracy to take care of this problem?"

The only answer I can give you is that it is possible, but only if you really narrow down those areas where they can practise. Otherwise, you have to follow the model of Bill 42; you have a regulatory scheme.

Mr. Chairman: One of the problems we have is that there seems to be general agreement by virtually every organization that has come before us that Bill 42 is necessary and needed. They are not necessarily in agreement with the details of Bill 42, but they are saying that is a model and perhaps, as my colleague suggests, in principle it is the right direction to go.

The difficulty is that this industry, if I can call it that, is way ahead of where we are as a Legislature in terms of control, standards and all the other complications that surround that question. I guess what I am trying to get a handle on, and I suggest the struggle is inside the minds and hearts of many of the members of this committee, is where do we proceed in a responsible, logical, chronological fashion from this point?

Do we ignore the problem as it is now, try to come up with more perfect legislation and perhaps go to a task force, as an example, which has been suggested, or do we go with Bill 42 in its present form, perhaps amended, perhaps taking into account many of the suggestions that have been made before us, and then amend that legislation at a later point when we get a better handle on all the problems?

I am looking to you for some suggestion as to what you would do as your next decision if our roles were changed? Would you go to the task force, would you go to Bill 42 or what would you do? I realize it is not the easiest question in the world.

Mr. Ruby: It is a highly personal question, so bear in mind it is a personal answer. Contrary to my politics, I am personally very conservative, so I would go very slowly. I would start off by picking one or two areas, the tribunals I knew were safe, labour relations tribunals with a long history, small claims court, because there are no problems there yet, and maybe one or two others. I would say, okay, we will allow paralegals to operate in those areas. We are not going to allow them to operate anywhere else until we see how it goes there for a while.

We review the regulatory scheme. We cut back on a number of provisions of Bill 42. We do not need a complicated submission by the law society. We keep the basic structure of providing a registry. I might incorporate a provision that allowed the tribunal to keep a registry in front of it of who is going to be allowed to practise and let the tribunal keep some control that way until we get feedback from it on an ongoing basis.

I think that is the minimal first step, because POINTTS allows them to practise in these tribunals at the moment. Unless you shrink it down, I think you have to provide a regulatory scheme. Study it, sure. I am chary of the attempts of legislatures, with the greatest respect, to legislate a problem in general and to solve a problem in general. I like experience better. I would rather start very narrow and proceed step by step. That would be my personal predilection.

If it worked out well in most tribunals, I might expand it to others. I may have a study going on simultaneously. I might do any number of things, but I would not open it up on the basis of theory. I would want to know what our track record was. I would look first to the track record.

Mr. Chairman: Mr. O'Connor wants a supplementary. I just want to make one other point before I give the floor temporarily to Mr. O'Connor. The chairman wants to use the prerogative of getting the floor back for a moment.

While all this exercise is going on that you have just described, Mr. Ruby, do you not anticipate that the court challenges will continue? I know none of us can predict the future, but we can anticipate that there will be an expansion perhaps of some of those services as a result of those who wish to expand them who are in the industry and are looking at the opportunities that are there to expand whatever base we may collectively decide upon as being the first step in the process.

Mr. Ruby: Court challenges to a narrow jurisdiction would have to be founded, leaving aside technical problems which can be corrected by legislation, on section 15 of the charter. Speaking as somebody who does Constitution litigation, that is a very tough challenge. When a legislative committee has looked at the issue and decided, "This is what we are going to do; this is our first step and we will look at it later on," I think it would be very difficult to challenge.

I am not worried about legislative challenges. There will be litigation. Undoubtedly, there will be litigation challenging our authority to stop them from drawing wills, giving tax advice, doing family law and all the rest of it, but I am not concerned about it.

Mr. O'Connor: Just by way of supplementary on the question of starting narrow versus opening the matter up, again I think we are getting agreement entirely on that concept and that approach. That is exactly what I have tried to do in Bill 42, although, as has been criticized, it is open-ended, which can be easily remedied by deleting clause 8(1)(f), the additional bodies.

The difficulty with your approach, and you have named and enumerated two, three or four safe tribunals with which we could start, is that, as you have pointed out, there are several hundred perhaps already in the province where agents are permitted to appear before those tribunals. Are you suggesting that we start with those, as I think I am, basically because they are already permitted to--and that is what POINTTS says, they can act--or are you suggesting that we amend all those statutes, eliminate the word "agent" and restrict it to a very narrow few?

I think we are on base in terms of the basic approach, but why not? Because the Legislature has thought it through and has permitted agents to appear on all these basic tribunals, why not allow that to continue? Of course, all the bill does then is to regulate them and make sure they are competent.

1650

Mr. Ruby: I think you are right. Practically speaking, that would be the only way to deal with it. You would have to leave it with the general gamut, but you may make some exceptions. You would not want every tribunal to have it. For example, you would not want workers' compensation to be a place where they were doing it.

Taking that as an example, you have an adequate panoply already in place of low-cost or free services. It is not good social policy to encourage people, who need that money from workers' compensation and who cannot afford to pay, to pay money to paralegals or to lawyers. We just do not want to encourage that. You want to carve out those areas at least. I agree with the tenor of your question. I think you are right. You have to let the vast majority of those go.

Mr. Chairman: Thank you very much. I appreciate the tremendous amount of time the society has put into a very comprehensive brief. You have done a lot of study in this and a lot of thinking on it, quite obviously, and I need not ask how many committee hours have been invested in the whole proposition of where we go from here. You are going to help us tremendously in our struggle to come up with what I hope will be a responsible decision, but let me thank you on behalf of all members of the committee. You have been very free with your time and we are thankful for your advice and the suggestions you have put before us. Thank you very much.

Mr. Ruby: You are very kind, Mr. Chairman. Thank you.

Mr. Chairman: The next group we have is the Steering Committee for the Self Regulation of Immigration Paralegal Agents in Ontario, represented by Dr. Aileene Williams. We will be referring to exhibit 6, which was distributed to you earlier.

Dr. Williams, we welcome you to our committee and welcome you to the discussions that we are having surrounding Bill 42. Whenever you are comfortably seated, you can get under way.

For the purposes of Hansard, please introduce the colleague you have with you.

STEERING COMMITTEE FOR THE SELF REGULATION
OF IMMIGRATION PARALEGAL AGENTS IN ONTARIO

Dr. Williams: I would like to say thank you to the chairman and members of the committee for inviting us to be here. My colleague is Keith Forgie. He is a paralegal counsellor. He has had six years of counselling experience with the Canada Employment and Immigration Commission. He has worked at both the federal and provincial levels of government in the administration of the Immigration Act. He is also a past deputy registrar in immigration at the Immigration Appeal Board.

My name is Dr. Aileene Williams. I am also a paralegal counsellor. I have had seven years of experience in paralegal work but not with the commission. I have worked for the Ontario government in the Ministry of Community and Social Services and have been involved in research and development of various projects, including paralegal clinics in Simcoe county.

I believe everyone has a copy of the submission we have put forward. The submission was done by the Steering Committee for the Self Regulation of

Immigration Paralegal Agents in Ontario, of which I am a member. I am not thinking of going through the submission totally, but perhaps we will do a walkthrough.

We have no problems with the majority of Bill 42; in fact, we welcome such a bill. We would like to see assent given to the bill. As paralegal agents working in Ontario, we would like to be a regulated body. Perhaps this is favoured by most paralegal agents in Ontario. We have the right to work in immigration under the Immigration Act, 1976, and under its various regulations and policies, so our work with the act, the policies and the regulations is upheld by federal law. However, we do feel it is necessary for the province to regulate this body.

We feel there is a need for us to be protected as a profession. The profession suffers when adverse publicity is attached to it, such as we have had over the past several months. We feel the general public suffers because it is in an uncertain situation. People do not know what we are about. The newspapers say we are one thing and somebody else says we are something else. We feel we are something else. With the bill, there would at least be a way to maintain discipline within the profession. We feel paralegals are here to stay. It certainly is a profession that is mushrooming and we do not see it as responsible government if this body just says, "We will leave it and somebody else will deal with it some time in the future."

We are concerned about the overseeing of paralegals by the Law Society of Upper Canada. We are concerned because we feel there is a matter of conflict of interest here. We have offered some solutions although we are not saying they are all the solutions. I am sure that with the collective thinking of everyone in this room, other solutions may come out of this. We believe the law society will be constantly on the carpet, so to speak, about its conflict and I do not know how this can be resolved.

We feel we have offered two solutions. One is an amendment to that act to include us but to make us an autonomous body. The other solution is that we can perhaps be regulated under some other government body; we have suggested the Ministry of Consumer and Commercial Relations. Again, this would be left up to the standing committee on administration of justice.

Mr. Forgie: I would like to make a couple of points generally about the inclusion of immigration consultants in the bill, the first being to hope that the committee is not hoping or seeking in some way to deal with what has been a very popular and very broadly argued matter about the conduct of some people. We are speaking specifically about an article in the newspapers last week where people were paying for advice or paying for something and coming to Canada and working illegally.

1700

As I understand your bill, what it will do is regulate those consultants who would be able to appear before an immigration inquiry and an adjudication hearing or before the Immigration Appeal Board. That is a very limited and narrow way of regulating or dealing with people who are in the business of dealing with the immigrant community, whether they are lawyers, consultants or whatever they call themselves. For those purposes, it is a person who is inside Canada whom the government wants out or a person outside Canada who wants in.

The bill will not approach, deal with or allow any regulation of the

people who are involved in the selling of documents and the provision of advice that if you get to Canada and hide for a little while you will be able to work and then you will get your permanent papers. In one way or another, it will be done.

I thought I would try to illustrate the point that what most of us do in this business is to deal with government policy. I will highlight that by talking for a moment about an immigration inquiry. An immigration inquiry provides the legal basis for a decision that a person is deportable or removable from Canada. In this business, most of the time spent by a consultant, a lawyer or someone who is trying to help someone stay in Canada is on finding a way of avoiding having that person go to an inquiry. There are a great many ways of legitimately and properly putting forward a case for a person who is or may be defined in a particular category that the federal government does not want removed from Canada. The big part of our work is bludgeoning the department to recognize that within this category the person who is going to be sent to an inquiry should not be sent to an inquiry.

There is another thing I want to deal with. I was afraid of frightening everybody by bringing tons of paper, but I would like to illustrate it for you. I think it is the only way of demonstrating what we are talking about. It is in terms of the immigration manuals that are publicly available. This is every piece of law and regulation that we deal with in this business. It is the Immigration Act, the immigration regulations, the two sets of the Immigration Appeal Board rules, the immigration fees regulations and how to deal with a human rights complaint. This is it. This is the law.

Mr. Chairman: I saw you walk in with all those books. I was hoping you were not going to read them all.

Mr. Forgie: How to interpret policy: This is 97 ways of keeping your clients from going to an inquiry. It is different from going to a traffic judge. I am not going to read these here. I just want to illustrate the point.

I guess that is about it. I also wonder a little whether a provincially passed piece of legislation would have much impact on the conduct of the immigration consulting or legal profession. It is one that is carried on inside Canada, outside Canada, in Ontario and outside Ontario. I do not know whether you want to get into the business of regulating people in Ontario to deal with the federal government on a specific piece of legislation. I am told, "Yes, you do."

There is another point I wanted to make but it was small, so that is all.

Mr. Chairman: Perhaps we can go to questions. I have Ms. Gigantes and Mr. O'Connor on the list so far.

Ms. Gigantes: I wonder whether you can tell us a bit about your businesses, about what kinds of cases you handle--you have referred to the board of inquiry--and also why you want regulation.

Dr. Williams: Perhaps I will go ahead because I have been on the other side of it, not the commission side but the other side of it, for longer than Mr. Forgie.

I deal mainly with women. This is my specialty. I have done this just about all my life. I was a midwife at one stage. Mainly, I see West Indian women. I see women whose husbands have been refused entry to Canada. I see

women who have their children in Jamaica and who cannot get their children. I see women who have worked here for many, many years, but because they are domestics or are not making perhaps \$20,000 or \$26,000 a year, the government official dealing with them says, "You cannot stay in Canada." The basis of "You cannot stay in Canada," is, "You are not making enough money; you do not follow the regular pattern of migration," which is male first, then female. Jamaican women particularly are women first and then men. They are constantly up against this problem.

I was born in Jamaica and I am not certain whether that is the reason, but I understand what they are talking about. When a person sees me, my job is to convince the official there is a place for this woman and that she does fall within one of the categories of those mounds of paper written there.

There are times, also, when you will see somebody who does not fall anywhere, yet has a genuine, humanitarian, compassionate case. Your job is to walk that person through from the front office here to the minister's office in Ottawa, if necessary, to get somebody to see the case is here and someone should look at it in a positive way.

Ms. Gigantes: How many cases would you be involved with in a year? Have you any notion?

Dr. Williams: A lot.

Ms. Gigantes: And your clients would not be eligible for legal aid because most of them would not have permanent residency.

Dr. Williams: Most of my clients would not be eligible for legal aid. A lot of them have gone through the legal aid system and whoever has been there has not worked for them. I see an awful lot of clients who have been seen by lawyers. Somehow they have been refused, have not clicked and so they are back.

Mr. Chairman: Can I have a high-low as to the fee charged in the particular cases Ms. Gigantes is referring to? I realize a complicated case would be more, but what would be the lowest and the highest amounts it would take you to complete an immigration case?

Dr. Williams: I have seen people for absolutely nothing. I have worked as a distressed women's counsellor in this area for quite some time and I have seen people where there has been no charge, or I have not charged them simply because they could not afford to pay it, or they have gone to a lawyer, paid all their money, cannot afford anything and yet still need help.

I have had cases that have taken me as long as four and a half or five years to complete. In that case, the highest charge would be \$1,800. I would also like to say that this case would probably take me to Jamaica, perhaps twice. I would have to do a lot of tracking of people in Jamaica, finding relatives, children, people who knew the person when she was a child, etc., before it could be completed.

Mr. Chairman: From your experience, what would the high-low be in the legal field for the same services? I know you cannot give an exact number but just from your own personal experience, you indicated--I am really coming off the comment you made that they have paid all their money to a lawyer and therefore you charged them zero. What would all that money amount to?

Dr. Williams: I have had people who have paid as much as \$5,000 and not been successful.

1710

Ms. Gigantes: If I could comment, certainly people have come to us. I remember one case within the last couple of years of a gentleman who came to our office who had paid a bill of \$4,000 to a lawyer for assistance with a Workers' Compensation Board case and had not had satisfaction. I think those things happen.

The other question, and perhaps another comment on the type of work that you do, Mr. Forgie, is that I am curious why you want regulation.

Mr. Forgie: I am not the strongest of proponents of regulation. I believe--I suppose this will have to be personal--that anybody who is going out in the society, especially dealing with immigration--this is where it gets difficult. If people have a complaint or have been wrongly treated, either by immigration officialdom or by the person they are paying to represent them, they are in a real bind because they are not here any more. They are somewhere else but they are not in Canada.

Those people are vulnerable, no matter what category of immigrant they are coming to Canada as or no matter what category they have failed to be accepted in under policy in Canada. It does not matter whether it is a Japanese businessman or someone who is scrubbing floors in a restaurant illegally and waiting for immigration to come and get him. They are vulnerable. They are absolutely terrified of any form of officialdom, any type of regulatory group or agency. They cannot go to the police and complain about something. If they do, the police will want to know who they are and why they have gone.

I think we should be regulated because there has to be someone to protect them against people who are going to be doing whatever within the business of giving people advice and representation with immigration. The problem is, as I see it, whether it is even possible or likely it can be done at a provincial level, because it is not so much a question of advocacy in the sense that the legal profession is used to it.

You are not going into a court and hammering it out in front of an independent judge. You are going in front of administrative people. For the want of a better word, I suggest that we are more lobbyists than we are anything else. If the immigration official at level 2 will not do anything, you go to level 3, and if level 3 will not do anything, you go to level 4 and tell him that if he schedules an inquiry before you get an answer you will go to level 5, and so he does not.

There should be some kind of system to regulate and the problem is you are not going to be able to address or I do not see how you can address where the real abuses are going on in this entire immigration area. That is the extra-national advice that people get on how to get in, how to avoid detection at a port of entry, how to avoid being detained if you are detected and how to disappear once you get into the country.

The people who are in the business of selling social insurance cards or other forms of identification or passports cannot be addressed here. It is addressed very well under the Immigration Act and is provided for in sections

of the Criminal Code, but it is a difficult area to prosecute. I also spent time as an immigration investigator.

Ms. Gigantes: What do we get as a society from attempting to provide regulation for people who are providing your kind of services?

Mr. Forgie: What do you get for society in general? I am not altogether certain you are going to get that much. What you are going to get for the person who is able and understands that he has a right to complain somewhere is probably not much more than his fees back or some mechanism of exerting some influence over the person who was doing whatever it was for him.

Ms. Gigantes: Can I rephrase the question? I think what you have identified as a situation for people who need your services is accurate. Those people are incredibly vulnerable, the most vulnerable people with their feet on the ground in Canada. On the other hand, if we set up some kind of system where they as clients could get redress, that has not solved their problem. All the fears and anxieties that they have around their citizenship situation are there, so they are not likely to complain to anyone anyhow.

Dr. Williams: I believe that if there is regulation, there will also come with regulation some means of discipline. At the moment, although those people in the practice of paralegal immigration work would like to be able to discipline the people they know are not working as they should, there is no means they can use at this time to do it. There is nothing to do it with.

I think those kinds of safeguards come with regulation. There is a way of practising. You are a profession. You practise this way. If you do not, your credentials are removed. You will have to meet certain educational standards. You will have to meet certain tests or whatever it is to be able to get that certificate that says you can practise. If you do not have it, then the police are able to say: "You are saying you are a consultant or a counsel and you are not. Therefore, you are liable for a fine under this part of the act."

I am sorry. I got carried away there.

Ms. Gigantes: We know of cases where that does not work with lawyers.

Dr. Williams: I am sorry?

Ms. Gigantes: We know of cases where that system of self-regulation and the attendant legislation that provides discipline is not effective with the legal profession. Why should we expect that it is going to work with the paralegal profession, particularly when the client area that you are talking about is made up of such vulnerable clients?

Dr. Williams: We realize that. We work in this system, so we realize that perhaps there are legal people who do a worse job than the paralegals. The point is, at this time, the paralegal profession is growing. There are no two ways about that. At the moment, anybody can come up and say, "I'm a paralegal." How is the public going to know? At this point there is no way for the public to say, "I may get good service." Right now, there is no protection at all.

Even though there are lawyers who fall afoul up the Law Society of Upper Canada, I think there is a way of disciplining those lawyers. This comes back

time and time again when we write to the regional director for immigration or go to the minister about a problem. The minister says to us, "Yes, but you know the society is there to regulate such and such a person."

In our case, there is nothing to regulate us. The individual who is vulnerable does not actually know and can never find out whether this person is going to be all right or not. I think this is something the bill will provide for.

Mr. O'Connor: Just to follow up on that point, perhaps I am missing the point of Ms. Gigantes's question, but I think you have answered it very adequately, Dr. Williams. I cannot understand how it could be better not to regulate in that area and attempt to prevent the charlatans who exist than to simply leave the situation as it is at present.

Surely education standards, certification standards, disciplinary proceedings against the charlatans would be better than the way it is now, where we have the situation as it was set out in the Toronto Star a couple of weeks ago. Just in answer to the question that you raised, Mr. Forgie, about whether we were reacting to that, of course this bill was drafted in excess of a year ago, so it was anticipatory of that kind of situation, which does exist from time to time.

1720

Mr. Forgie: I did not mean to imply the bill was a response to that, but I wanted to address or at least make you aware of the fact that those now being presented in the press as charlatans and the people who are involved in the scams as they are called--that will not be addressed by this bill. Even if this bill was passed I could hang out a shingle--and you have included immigration consultants--offering immigration advice, which would be, "Here is how you go about circumventing the Immigration Act and the regulations and stay illegally in Canada for a long period of time," and if I got hustled out of Toronto, I could go and do it in Haiti or I could do it in Kingston, in New York or wherever. But it does not address the provision of advice, as I understand it.

Mr. O'Connor: Yes, it does. I made a note to myself to address that for you.

Mr. Forgie: I am sorry.

Mr. O'Connor: I was going to point out in regard to that, and that was my next point, subsection 8(3) attempts--perhaps it can be improved; I do not know--to cover the situation. You have made preliminary comments that all we were dealing with was inquiries under the Immigration Act and the Immigration Appeal Board situation, but subsection 8(3) attempts also to regulate all matters associated with the proper administration of the proceeding. What I was attempting to mean by those words was preliminary advice, the kind of in-office situation you are describing, which did not appear initially to be included in the act.

As I have said, that is the intent and that is the attempt. We may not have achieved it, but surely we want to include not only the conduct of the paralegal as he appears before the small claims court, the provincial offences court or the immigration appeal court, but all of his activities and dealings

with the client leading up to those situations, because obviously you are right, 90 per cent of the work is done outside the tribunal.

Ms. Gigantes: Can I ask a point of clarification there? Would you read subsection 8(3) to mean that it stands alone? I would understand subsection 8(3) to mean that once a person was a registered paralegal, that person could carry on a proceeding as described in subsection 8(1) but that proceeding would be extralegal, if you want, or extra case presentation work would have to be associated with an action. For example, under clause 8(1)(e), if there were no examination or inquiry under the Immigration Act, then I cannot see that subsection 8(3) would prescribe the kinds of people who could carry on work associated with subsection 8(3).

Mr. O'Connor: No. The point is that the last step, ultimately in any Immigration Act proceeding, is a hearing before a tribunal somewhere. Is that not the case? If I am wrong on that, then we are misinterpreting. I know you make the point that what one is attempting to do is avoid the hearing, but ultimately that is the last step in the proceeding if one is not successful in your work, so that any work leading up to that is work which is associated with the proper administration of a proceeding, is it not?

If I am wrong on that, the intent is there, and I suggest we amend the section.

Ms. Gigantes: Can I ask again then? Under subsection 8(3) what you are suggesting is that somebody who never went to a hearing or an inquiry would be limited to being a paralegal agent if that person were providing services for pay that were associated with the Immigration Act?

Mr. O'Connor: Yes. What we are trying to do is catch under the purview of this act and therefore subject to the disciplinary proceedings of this act and the other regulatory requirements, anybody who deals in the immigration area. I think that is what these people are wanting. At least Dr. Williams very articulately said, "We want the assurance to the public we deal with that the people they are dealing with, who are paralegals or calling themselves that, are educated, are trained and are honest."

By interpreting subsection 8(3) the way I have, I think that catches anybody and everybody who is providing a service under the Immigration Act. It does not necessarily have to be the service set out in clause 8(1)(e) which is attending before the board. Am I correct in your intent? You want everybody who deals with immigrants to be included.

Ms. Gigantes: What Mr. Forgie is saying, if I understand the point, is that if somebody is not registered as paralegal and therefore authorized to perform under clause 8(1)(e) and subsection 8(3) they can still hang out a shingle, call themselves an immigration consultant--

Mr. O'Connor: No, they could not. If this bill were in effect, they could not. They would be subject to the fines set out in section 10 because they would be calling themselves immigration paralegals and they would not have been certified and so forth and they would have been providing the services.

Ms. Gigantes: Why would they be calling themselves a paralegals? If they were not allowed to be paralegals, they would call themselves consultants, advisers.

Mr. O'Connor: Well, if they were doing essentially the work that paralegals were doing under this section, then they would be contravening the act, just as somebody who does wills or corporations and goes over that line of demarcation is subject to prosecution by the law society under the Law Society Act, the section 50 prosecutions we have heard about. We will always have the difficulty of where is the line, but at least we will have a line. Right now there is none. Anybody can do whatever they want as a paralegal.

Ms. Gigantes: Thank you.

Mr. Chairman: Mr. Forgie and Dr. Williams, we appreciate you coming before the committee and I thank you for placing your position before us for consideration. As you know, we will attempt to get into clause by clause on this issue tomorrow. You are welcome to come back and listen to the deliberations if you would like. You cannot participate at that point because we will get into exactly the kind of debate that Ms. Gigantes and Mr. O'Connor were just getting into a moment ago. We will be back into that tomorrow and we hope to finish the bill tomorrow, but that remains to be seen.

In any event, thank you for your time.

There was agreement by the committee that we would attempt to get Professor de Clerville on, if we could, before we finished this afternoon and I think we can attempt to do that now. Professor, if you would come forward, we will allow you to make your submissions at this time.

I would ask the members of the committee as well as Professor de Clerville to recognize the clock and the problems that we have got with respect to time. We are trying to accommodate the professor's wish to appear before the committee and as well to recognize that we have only a fairly limited amount of time so I would ask you to keep your submissions reasonably short because there will be some questions, I would imagine.

Mr. de Clerville: I wish to thank you very much indeed for seeing me this afternoon. You all have a copy of my submission so I shall not really waste your time, hopefully.

Mr. Chairman: Before the professor starts, exhibit number 8 is the submission you have before you and I will ask you to proceed sir. Sorry, I did not mean to interrupt you.

Mr. de Clerville: I believe that you would have more questions to ask me than I would have to say to you because I have spent the longest time as a paralegal in this province, 10 years doing divorce matters and family law matters.

I feel that there is a great need for the control of paralegals. I think that there is a great need for paralegals. However, I believe that through Bill 42, it would not work out for the simple reason that there are not enough guarantees for the public. Anybody could, as the gentleman said before, hang up a shingle and call himself a paralegal. He would be allowed to do any type of work.

I believe that before one would be allowed to practice, let us say in the traffic area, one should actually be tested in that area and be permitted to call himself a traffic paralegal. If one is allowed to practice in

immigration law, then one should submit to tests, examinations, and be allowed to call himself immigration paralegal.

If one just term, just one appellation, "paralegal" were to be used, anybody, if he is trained in traffic, if times get tough for him, he could go and practise immigration law, which is going to be a danger to the public.

1730

Mr. Ruby talked about complaints. I have received more complaints against lawyers than I have against paralegals, but I say to you honestly that the danger here is the franchises. I also believe that paralegals should not be allowed to franchise out because many of them pay fees and cannot comprehend the issues they come across. Many of them cannot comprehend but because they have paid money to become a franchisee, they want to force issues. This is a very great and extreme danger to the public.

I have dealt with many such complaints. I will not say too much about it at present because there is so much to say, but this is a great danger. I think Bill 42 should cover this, that no franchising should be allowed. It is extremely important.

I think a few other areas of law should be added, for instance, an uncontested divorce. I can assure you, ladies and gentlemen, that I myself have been approached and I still do divorces for conventional lawyers. In other words, many of them would charge from \$1,100 to \$1,200 for an uncontested divorce, and I would do the paperwork and everything for about \$450.

I have represented conventional lawyers in family courts at reduced costs. The conventional lawyer would receive, say, \$2,000 for a case and would pay me \$1,000 to represent his client. I have done that a lot. If you were to ask me who is the expert in the uncontested divorce field, the conventional lawyer or the paralegal expert, I would gladly say that the paralegal is the real expert. The majority of conventional lawyers know very little when it comes to divorce.

I do not know if all of you have seen my submission to the Attorney General (Mr. Scott), but in that I have described many cases I am fully aware of, people who have come to see me. But those are areas which might become very dangerous if precautions are not taken in Bill 42.

Maybe now I should answer your questions.

Mr. Chairman: Professor, for the record, I have been asked a question to identify your background somewhat more specifically. What area of professorship are you involved in?

Mr. de Clerville: I am a professor of linguistics. I have written about seven courses in French. I have also lectured in family law. I am not a chair professor, that is, I do not hold a chair at any university. I have written language courses, and by this very fact I am entitled to call myself a professor. I am a professor of linguistics. It has nothing to do with law. However, I have written many books and papers on family law. I have lectured in family law and in divorce law. At present, I train paralegals to become paralegal experts in uncontested divorces.

Mr. Poirier: Mr. de Clerville, I am intrigued by your remark on the first page where you say you consider yourself a specialist but you are neither a lawyer nor a paralegal. Would you be able to help me go through this specialized definition? It sounds almost like a legal definition itself.

Mr. de Clerville: I must apologize. Here I meant practising paralegal instead of just paralegal. I specialize in family law, meaning to say that I have about eight years experience in family law itself; that is, representing people in provincial court (family division), which is allowed under regulation 10/85, if my memory serves me correctly.

I would go to court and most judges would actually know me by name. Most often, when I would ask for permission to act as an agent, the judge would say, "There is no need for you to do that," because I have never lost a single case, and I have done hundreds of them. Very often, conventional lawyers would call me and ask what approach to take in certain cases. I have done many cases involving adoption, custody, access, support, mediation and all those involving family law.

However, I do not do family law when it concerns the Supreme Court, because it is a different thing altogether. But I do represent people, which is allowed, in the provincial court (family division).

Mr. Poirier: What would you like to see? How can Bill 42 or whatever replaces it help you?

Mr. de Clerville: It would help me greatly, in a sense, but I think it ought to be amended to protect the public, because after all, we are here for the public; we are looking for an act for the protection of the public. I feel that Bill 42 as it is does not offer enough protection to the public in that it does not say who can become a paralegal.

I would give you one little instance here. There is a person--I am not going to name any names--who has purchased a franchise. I received a complaint against that person. When I spoke to that person over the phone, that person could not even speak English. That person has purchased a franchise, and all the papers were being sent from an office in Toronto. On behalf of that person, I have sued two people, and that is because franchises were being sold.

I feel it is imperative that it be against the law, the paralegal law, if you wish, to sell franchises. Obviously, when you put an ad in the paper, "Franchises for sale, income of \$60,000 to \$70,000 to \$80,000," which is totally untrue, a person is taken by this figure and says, "Well, let me put down \$10,000 or \$15,000 to be able to make \$70,000 a year." That person cannot make even half of that. Then there is trouble, and usually it is the public who pays.

Also, in the franchising business--again I will refrain from naming names--I personally know of about 16 people who have paid hard cash for the purchase of franchises, have not been able to practise and have sued and sued people. This is not for the protection of the public. When this happens, it is bad.

Mr. O'Connor: Just to follow up, if I may, on the last question: Mr. de Clerville, you say the bill does not indicate who can be a paralegal. I would suggest that is exactly what it does do. It says that no one can be a paralegal unless he meets the standards and qualifications as established by the governing body in terms of education, certification and good moral

standards as set out in section 4 and so on. That is the purpose of the bill, and with respect, anybody in the category you mentioned who is unqualified would not meet those standards and therefore could not practise.

1740

Mr. de Clerville: With due respect to you, Mr. O'Connor, we have been through this before. I have been to your office indicating those things to you. When a person calls himself a paralegal, that person can render services in immigration, traffic, small claims court or whatever. If the person is not trained in rendering services in, say, small claims court yet is capable of representing a person in a traffic court--therefore, if a person does not have enough work in the traffic court, he would be tempted and will go to practise in a field in which he is not qualified to practise.

Mr. O'Connor: Except for the problem of certification. If he is not qualified in a particular field, he would not have received the certification to do so from the governing body and would not be permitted to do so. That is what education standards and certification standards are all about.

In any event, I have another question. You mentioned that you practise in the area of uncontested divorces.

Mr. de Clerville: Yes.

Mr. O'Connor: Most divorces that are processed in Ontario these days are uncontested. However, in my experience, I can tell you that most divorces are uncontested after a considerable period of time of negotiation between the parties as to custody and access, division of assets and the quantum of support to be paid by one party to the other. When those items and issues are resolved, then the matter goes on to what is now a very simple process of filing papers and a nonattendance in court.

The real guts of dealing with divorce matters are the negotiations and the proper advice to the parties about those significant issues prior to doing the routine proceeding of processing the divorce. I would suggest that is an area where real competence is required and should be left to the lawyers, who are educated and experienced in that field.

Mr. de Clerville: With due respect to you, I beg to totally and utterly differ with you for the simple reason that a uncontested divorce is not that at all. An uncontested divorce is one where the respondent does not oppose the divorce.

The petitioner would come to you. You would prepare his document. It would go to 145 Queen Street, and the only thing that would be done is that the petition would be issued. There is no quantum of support, there is no support, there is no access--nothing like this at all. The document goes to court, it is issued, accepted by the court clerk and served by a friend of the petitioner, a sheriff or a process server and 21 days later this is set down in court. One pays \$85 for it. I would say to you that 98.9 per cent of cases are like this. Believe me, I have been through this.

Mr. O'Connor: I have been a family law lawyer for 15 years, and I will tell you, that is just a crock, 98 per cent.

First of all, the various parties should be given proper advice as to their rights to access, custody, division of assets and support. If someone

comes into my office and says, "All I want is a simple divorce," I ask the necessary questions to determine what his rights are in those regards. You will find that in any case where there are assets at issue, where he has had assets, where one party is making more money than the other or where there are children involved, those questions should be asked. They should be resolved. If you are processing divorces without asking those questions and without providing that particular advice, there is a disservice being done to some of the public by not being apprised of their rights in those regards.

Mr. de Clerville No. With due respect, you have read my submission. I sent a copy to your office, and you have read in it the amount of mistakes which are committed by conventional lawyers in uncontested divorces. I have seen so many of them, and they are full of mistakes. I repeat myself. The expert in uncontested divorce is not the unconventional lawyer but the expert paralegal.

Indeed, there are about 98.8 per cent of cases which are uncontested, and I do a lot of them. I ought to know.

Also, Mr. O'Connor, when a case is opposed, it is just not that two parties sit down and talk. It is not like that at all. It goes through a mediation process, which I do myself. Believe me, many lawyers hire me to do their mediation. That will show you how competent they are.

I am not putting lawyers down at all. What I am telling you is that they cannot be as competent as expert paralegals. Obviously, I am using the words "conventional lawyers." Possibly you were an expert lawyer in the field of family law.

Mr. Chairman: If we ask Mr. O'Connor, he will probably tell us whether he was an expert. Maybe we should leave that for another day.

Mr. Ramsay: And our imaginations.

Mr. Chairman: I am sure it will be a long speech.

Mr. Gigantes: I guess this is a supplementary question to Mr. O'Connor's questions. Could you point out which section of Bill 42 would specify that a paralegal would provide services in an area of speciality? My understanding, in reading Bill 42, is that you would be called a paralegal and that you could operate in all the areas described in subsection 8(1).

Mr. O'Connor: The anticipation is that the committee that will be established to govern the profession will set the educational standards and requirements and certification requirements and that there would be specialization included. Obviously, one would not become an expert paralegal in all the areas set out in clauses 8(1)(a) through (g) after a two-year course or a three-year course at a community college. Of course, that is why the governing body includes somebody appointed by the Minister of Colleges and Universities. It is anticipated that is where the educative process would take place.

Ms. Gigantes: Could you enlighten me? When a lawyer is called to the bar, does a lawyer have any prescription on areas in which he or she can practise?

Mr. O'Connor: No, not as such. I think what a lawyer generally does these days is take a particular area of courses in law school with the idea of

specializing when he gets out, but his degree or certificate does not limit him to those areas. He can practise as a barrister or a solicitor or both in any area he sees fit. Perhaps that is a difficulty or a flaw in the modern legal system, which is now considerably broader than when we first qualified lawyers 100 years ago, when the field of practising law was very limited, generally to that of a barrister. That is another area of concern altogether.

Mr. Chairman: Thank you very much, sir, for adding to the knowledge we are attempting to assemble on this very complicated subject. We certainly appreciate your input.

Mr. de Clerville: Thank you very much indeed, sir.

Mr. Chairman: Is there any further business to come before the committee? It is the intention of the chair, based on the schedule that we have agreed to, that tomorrow we will go into clause-by-clause.

Mr. Ward: I realize that we are scheduled to proceed with clause-by-clause, but I think the submissions we have received to date and some of the debate we have had over the course of the past couple of weeks have indicated some pretty clear shortcomings in terms of the legislation that we have before us.

I will say that Mr. O'Connor's bill has done an excellent job in crystallizing the issue for us and really has brought to the forefront many of the concerns and issues surrounding the whole business of the regulation of paralegals, but I, for one, really do not see how we can proceed with this legislation, given the fact that it leaves as many unanswered questions as it purports to answer. I would like to propose we recommend that the Attorney General undertake a comprehensive study into this whole issue and establish some kind of study group or whatever to make some clear recommendations to attempt to answer some of these questions. I would be interested in hearing the views of other members of the committee before we proceed with clause-by-clause.

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Mr. Chairman: All right.

Mr. O'Connor, I thought you might have some comment to make in response to that. Of course, that presumption was unfair on my part, but you have the floor.

Mr. O'Connor: I am almost amused at my friend's attempt to delay the proceeding of this bill any further in that the attempt is so patent and the argument is so weak in that regard.

What I might ask my friend, if he is going to make that argument, is to substantiate it and to point out to us what shortcomings the bill has, keeping in mind--and I am sure he understands this because he has been here for some of the hearings we have had--that the purpose of the bill is limited in scope. I have indicated that from the outset.

Perhaps the most cogent remarks in that regard were made today by Mr. Ruby on behalf of the Law Society of Upper Canada. He agreed that there was a necessity for proceeding in the narrower limited area of the tribunals, as he sets out in their brief and which I set out in the bill.

We both agreed that although we do not agree entirely on what they are, that could be remedied by an amendment as we go through the process, but my friend did make the comment that it asks as many questions as it solves. Perhaps he could be more specific as to the exact shortcomings this bill has in it, keeping in mind, of course, that the purpose of clause-by-clause analysis is specifically and exactly to remedy shortcomings in a bill as we go through it.

Unless the shortcomings are overwhelming or astronomical in size, and I have yet to hear from any of the people who have appeared before us a substantial argument in that regard, I suggest we should go ahead with the view of attempting to remedy any difficulties that are in the bill. So far, I can think of two minor amendments that are required, which were pointed out by people before us, but nothing of the magnitude my friend is seeming to suggest.

Mr. Ward: I would be happy to respond to Mr. O'Connor's unbridled optimism. If we look at the key questions that have been raised by the whole exercise over the past couple of weeks and break them down perhaps into certain key elements, we can identify these as, first of all, should we have paralegals? I think it is fair to say that some good arguments have been put forward in terms of the need to have paralegals operating within Ontario to provide a cost-effective and affordable legal service for the people of this province.

In terms of the other two what I believe to be key questions, the first of which is, what should they be allowed to do, in other words, their scope of practice, I for one do not have a better understanding of or any more clarity in terms of what work paralegals should be allowed to do or how their scope of practice should be limited. Second, how should they be regulated? I do not believe that has been established.

You purport that some board or agency of paralegals is going to be given the power to make regulations, and yet it is not even established what criteria those board members are supposed to comply with or what background or legal training they will have, unless it is your anticipation that you are going to grandfather every paralegal in Ontario, give him a stamp of approval and have the consumers of this province believe they are getting the best service under a properly regulated professional association.

I just do not see how this bill achieves it and, frankly, I think these are issues that have to be dealt with--scope of practice, criteria and what sorts of disciplinary agencies are going to be set up in terms of self-regulation. If you look at any piece of self-regulating legislation in this province, all these things are, in fact dealt with. I do not believe you have done it in this bill.

Mr. O'Connor: I do not believe you have read the bill if you ask those questions. Let us go through them. What should they be allowed to do, you ask. You miss the point of the bill entirely. They are already allowed to do everything subsection 8(1) suggests they can do. Paralegals can appear in provincial court. There is no suggestion that this bill then allows them to appear in provincial court. Paralegals can appear in small claims court and in landlord and tenant matters. They are already perfectly allowed and legally representing people in these tribunals. All the bill does is to ensure that those people who are already allowed to appear in those tribunals are educated, properly certified and are subject to some disciplinary procedure when they screw up. That answers the first question.

Mr. Ward: How does your bill do that? How does it achieve all those things?

Mr. O'Connor: The bill ensures that anyone who does appear in those courts for somebody must have been certified by the governing body of paralegals.

Mr. Ward: Which is?

Mr. O'Connor: Which is the paralegal agents committee of the Law Society of Upper Canada, as set out in section 2. It is going to be the governing body which will set up standards and will set up certification procedures, and no one will be allowed to appear in these courts until he has met those standards.

Mr. Ward: And what standards has that governing body met in achieving its professional status?

Mr. O'Connor: What do you mean by that? The governing body, if you look at the section, is composed of people appointed by the Lieutenant Governor in Council. The two benchers are appointed by convocation and the five paralegals are appointed by the Lieutenant Governor in Council. If they are appointed by the government, obviously the government would not appoint these people unless, one, they were experts, and two, they were Liberals--I did not mean that. They would be experts.

Mr. Chairman: In what order?

Mr. Ward: The terms are synonymous.

Mr. O'Connor: Second, you asked a question about discipline. What is to discipline them? Read the bill, for goodness' sake. The provision in section 7 is for discipline.

Mr. Chairman: May I warn members who are engaged in this heated debate that you have about 120 seconds to conclude your remarks.

Mr. O'Connor: The provision for discipline is identical to the provision for discipline of lawyers. That has worked for 165 years. Surely it will work for paralegals. It is the same disciplinary procedures, with a subcommittee of the Law Society of Upper Canada doing the disciplining. It is all set out there in section 7, a grandfathering.

Again, that is something the governing body can decide: whether those existing paralegals should be required to go through the two-year or three-year course at the community college or whether they can be required simply to pass a test which would then determine whether they are fit to meet the standards set out in a particular area.

I am suggesting that every single question he has asked is addressed in the bill, if he would just read the darned thing.

Mr. Polsinelli: It is almost six o'clock and I suggest perhaps it would be good if we take this motion as notice and we can debate tomorrow.

Mr. Chairman: We can do that as well.

Mr. O'Connor: I have not heard a motion, actually.

Mr. Chairman: There is not a motion on the floor.

Mr. Polsinelli: There will soon be a motion on the floor.

Mr. Ward: I was interested in getting the views of other parties.

Mr. Chairman: There is only one other party that has not been heard from.

Mr. Ward: If they want to defer this until tomorrow, then--

Mr. Chairman: Mr. Charlton or Ms. Gigantes, would you like to make some very quick comments with respect to this engaging debate that has been going on, or would you like to continue to sit in the woods on this question?

Mr. Ward: Is it necessary that I give notice of motion, or can I just bring it forward at the start of our next meeting?

Mr. Chairman: It is not necessary. You may give notice of motion. That will put the other parties on notice that you intend to bring it forward, and they can be armed sufficiently to respond. Those are the realities of minority government, the chair would remind you.

The bell has gone. Do you wish to read a motion?

Mr. Ward moves that Bill 42 not proceed further at this time and that the standing committee on administration of justice recommend to the Attorney General that a study be undertaken to inquire into the role and function of paralegals in Ontario, consider which services, if any, should be delivered by paralegals and determine which method of regulation is called for.

Mr. O'Connor: The Attorney General tells me he is already doing that, so that the latter part of the recommendation is probably not necessary.

Mr. Chairman: We have a notice of motion. That motion will be debated tomorrow as we enter into clause-by-clause and we will make a determination as to whether this committee proceeds.

The committee adjourned at 6 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PARALEGAL AGENTS ACT

TUESDAY, JUNE 2, 1987

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Guindon, L. B. (Cornwall PC) for Ms. Fish
South, L. (Frontenac-Addington L) for Mr. Poirier

Clerk: Mellor, L.

Staff:

MacKinnon, M., Legislative Counsel
Evans, C. A., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 2, 1987

The committee met at 3:41 p.m. in room 228.

PARALEGAL AGENTS ACT
(continued)

Consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

Mr. Chairman: Members of the committee, good afternoon. We were to begin clause-by-clause on Bill 42 this afternoon. However, in the light of the notice of motion proposed by Mr. Ward, a copy of which has been distributed to the members of the committee--and this motion will effectively remove the necessity of our proceeding with Bill 42 on a clause-by-clause basis, if it is passed--I would ask that the committee deal with this motion first. I turn the floor over to Mr. Ward, so he can move and then speak to his motion, at which time, at the conclusion of his comments, the motion will be open for debate.

Mr. Ward moves that Bill 42 not proceed further at this time and that the standing committee on administration of justice recommend to the Attorney General (Mr. Scott) that a study be undertaken to (a) inquire into the role and function of paralegals in Ontario; (b) consider which services, if any, should be delivered by paralegals; (c) determine which method of regulation is required.

Mr. Ward: As I said yesterday when I gave notice of this motion, I still remain convinced that Bill 42 leaves too many questions unanswered, far more than it answers. Although I give full credit to Mr. O'Connor for having crystallized the issue for members, not only of this committee but also of the Legislature, and the public at large, I believe there are serious shortcomings in the bill as tabled.

If I could run very briefly through some of the concerns with regard to the question of whether we should have paralegals, I would be the first to concede that many of the presentations we received clearly indicated that, in fact, there was potential for a cost-effective method on behalf of the consumers of this province to receive legal representation in certain circumstances that might otherwise have required the services of a lawyer. I might have some reservations with that particular question, but certainly no fundamental arguments. With regard to what they should be allowed to do, I am not at all convinced that has been established.

I believe Mr. O'Connor feels, first, that some board or agency consisting of paralegals should make that determination as to what they should or should not be allowed to do--he has, in fact, arrived at some mechanism to make that determination--and second, that the paralegals in this province will put in place some methodology of self-regulation.

The concern I have is that as soon as we sanction somebody as a paralegal agent through the process of legislation, then I believe very strongly that we send a signal to the consumers of this province through some stamp of approval that we, as legislators, are satisfied with regard to their

capability, with regard to their training and with regard to their ability to represent consumers effectively in any circumstances they may choose to do so. Frankly, I am not at all convinced that, merely by passing this legislation, we achieve that.

Mr. O'Connor: We seem to be reiterating--each of us--ourselves from yesterday, but I would just meet some of the specific comments my friend has made with specific reference to the bill. On the question of whether we should here be establishing what paralegals should be allowed to do, again, as I think I said on a number of occasions to people who have appeared before the committee and to other members of the committee in reply to questions, that is not what Bill 42 intends to do and that is not what Bill 42 does.

What paralegals are allowed to do is already established by the Provincial Offences Act of Ontario. It is established by the Small Claims Courts Act of Ontario. It is established by the landlord and tenant tribunals of this province. It is established by the Coroners Act of Ontario, etc.

These statutes, which are statutes of this Legislature and which have been in place for a number of years, in some cases decades, already permit and regulate and determine what paralegals can do. What they can do is appear before these courts, these minor courts or these tribunals and represent clients for a fee, quite legally and quite legitimately. They have been doing it and they will continue to do it.

The problem, as I have said ad nauseam, is that five years ago there were a couple of dozen people acting in this capacity. Today there are perhaps 1,000 people around the province calling themselves paralegals. They are appearing before these tribunals and doing what they are permitted to do by the statutes quite legally, quite legitimately, but without any kind of training, without any kind of certification and without any kind of overseeing by a competent body that will pass upon their competence and that will exercise discipline over them, that will require them to maintain trust accounts and that will see they act in a good, moral way when representing people for money. That, it is my suggestion, is a nonstarter as an issue. It simply cannot be argued that we are doing anything to establish what paralegals should be allowed to do.

Second, my friend suggested they ought not be allowed to enter into some scheme of self-regulation. If my friend will read the statute, this again is not at all what I am suggesting. According to section 2, they would be regulated by the paralegal agents committee, which is a committee of the Law Society of Upper Canada. The Law Society of Upper Canada is a body that has been in existence for 160 years. It is well-experienced in the field of governing and overseeing and legislating a profession of some 16,000 to 17,000 lawyers. It has the experience and the backup staff and the facilities to provide the regulation process for paralegals. In no way, shape or form is it determined that they should be self-regulating.

If my friend is concerned that the committee is comprised of a majority of paralegals, in that it does in the bill call for five paralegals, two benchers and two lay people appointed by the Lieutenant Governor in Council, then I suggest that he provide for amendments to that section to address that imbalance. If he thinks that in any way results in a self-regulating profession, that was not the intention. The intention was that the law society be the governing body but that it be a committee of the law society made up as indicated in the bill.

He used the phrase, again, in a third argument, that somehow we here are in the process of sanctioning someone as a paralegal. Again, the same argument applies as to the first comment he made. They are already sanctioned, they are already out there acting, performing their duties. That is not the intent of the bill. All it intends to do is to provide some education backup, some certification procedures and some protection to the public.

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The problem with not proceeding, as my friend's motion would suggest, is that there is rapidly developing a serious problem in the area of public protection. Perhaps in the course of his arguments--if he would listen for a moment--in favour of this motion, he would provide us with his scheme, or the ministry's or the government's scheme for dealing with the problem of protection of the public in this regard.

His scheme seems to be simply to recommend--that is a very strong word, is it not?--to our Attorney General (Mr. Scott)--nobody recommends anything to him; he does what he wants--that a study be undertaken. What kind of weasel words are those? Do you think he will even read the motion?

Mr. Ward: Sure he will.

Mr. O'Connor: Do you think he will have any notion whatsoever of taking it into account and actually performing a study or doing anything about it? I highly doubt it.

We have the opportunity here. We have a bill that is three quarters of the way through the legislative process and with some hard work and some good amendments to some of the sections that I will be the first to admit do need some amendment, I think we can provide an adequate protection to the public in the limited area that this bill attempts to address.

Mr. Chairman: Mr. Ward, did you wish to respond? Ms. Gigantes wants to go next. I may want to respond.

Mr. Ward: It was relative to the point of having the study and what impact the motion will have. I know that the Attorney General has a very high regard for the work of this committee and others around here.

Mr. Chairman: Well he should.

Mr. Ward: He is anxiously awaiting whatever recommendations we make, and would attach great importance to whatever this committee would have to say in this regard. Mr. O'Connor, I know, is well aware of that.

The second point I want to make: Mr. O'Connor referred to existing provincial legislation that recognizes the role of paralegals within the province, and I think in fairness, Mr. O'Connor would recognize that legislation recognizes the role of agents within this province and not as paralegals or any other particular groups as some kind of sanctioned or accepted profession. I think there is a fundamental difference in what is being said and what is implied by it.

Ms. Gigantes: We are not going to support the motion. I do not think either of us is convinced that legislation is required right now. On the other hand, given the fact that at some point we may want to see legislation, I think it is not bad to have a bill go forward. The government can dispose of

that bill as it wishes once it leaves this committee. If the government feels, as we do, that there is no urgency about this matter, it certainly has a history on such matters as general chartered accountants and the question of public accountancy that indicates it is fully capable of delay. We would just prefer to go ahead today and deal with the bill.

Mr. Polsinelli: I have a question and perhaps Mr. O'Connor would be the appropriate person to answer it, given that he has prepared the bill and he seems to have an intimate knowledge of the status of paralegals in Ontario. He has mentioned in argument on a number of occasions that existing legislation authorizes the practice of paralegals. My understanding, and perhaps Mr. O'Connor can correct my understanding, is that the existing legislation, as Mr. Ward points out, authorizes agents to represent other individuals before those tribunals and provincial offences court, but it does not authorize them to charge for their services, and in fact, if they do charge for their services, then they may have a problem with the Law Society Act and the Solicitors Act. Is my understanding correct or incorrect?

Mr. O'Connor: As I understand it, it is incorrect. That very argument was made by the Law Society of Upper Canada in the case of the Law Society versus Provincial Offences Information and Traffic Ticket Service Ltd. The provincial court decision, which was appealed to the district court level, which was appealed to the Supreme Court level, all upheld the POINTTS point of view, which was that "agent" meant agent for a fee or a paralegal. As was indicated--I do not believe you were here yesterday--

Mr. Polsinelli: I was here yesterday.

Mr. O'Connor: --Mr. Ruby, on behalf of the Law Society of Upper Canada, indicated it was not appealing that decision any further. It is finished and he has accepted the decision of the highest court in the matter, which is the Supreme Court, that "agent" means agent for a fee or paralegal. It is a semantic difference. The word "paralegal" does not appear in the actual statute, but the result of the POINTTS decision in interpreting that statute is that all these paralegals can operate, as they have been operating, for a fee.

Ms. Gigantes: They can operate as paid agents.

Mr. O'Connor: Yes. I suggest it is a semantic difference, but if my friend wants to change the name of the act to An Act to regulate the Activities of Paid Agents in Ontario, I would be glad to accept that amendment. If that is all we are fighting about, that is easy.

Mr. Chairman: Any further comments or speakers with respect to the motion proposed by Mr. Ward? If not, I will call for those in favour of the motion. Please so signify by raising your hands. Watch my lips; I will speak slowly. In opposition to the motion?

Motion negatived.

Mr. D. R. Cooke: Does that mean we will not get to the Landlord and Tenant Act?

Mr. Chairman: That means we carry on. This has nothing whatever to do, as Mr. Cooke well knows, with the Landlord and Tenant Act. It has everything to do with the question of paralegals.

We are now into clause-by-clause. I would recommend to the committee that we leave the section on definitions, which is section 1, at this point. Pass that. We will come back, since the definitions may be altered or changed depending on how we deal with the bill. We will start with section 2 of the bill. Is that agreed? Agreed.

On section 2:

Mr. Chairman: Is there any comment on subsection 2(1)?

Mr. Polsinelli: Can you just hold on for a second? I am having a copy of the bill passed on to me again.

Mr. Chairman: You do not have it memorized?

Mr. Polsinelli: The situation is that I make such extensive notes on each copy I receive, and it is such a short bill, that I need a new copy every session.

Mr. Rowe: It is obvious that the member's notes overcame his bill. It happens frequently with this government.

Mr. Chairman: We will give you a little time to re-acclimatize yourself to subsection 2(1). That is a fairly straightforward clause. Shall subsection 2(1) carry? Carried.

Subsection 2(2): "The committee shall be composed of..." etc. Shall clause 2(2)(a) carry? Carried. Clause 2(2)(b)? Carried. Clause 2(2)(c)? Carried.

Top of page 2. Shall subsection 2(3) carry?

Mr. Polsinelli: Why do you not call this section by section, rather than going through the individual subsections?

Mr. Chairman: I can do that.

Mr. Polsinelli: We would probably get through it a lot faster.

Mr. Chairman: Yes, we can, but I also will have someone who will raise a concern about the fact that I am moving too quickly. It is a fairly short bill. It is subsection 2(3). Shall that carry? Carried.

Subsection 2(4)? Carried. Subsection 2(5)? Carried. Subsection 2(6)? Carried. Subsection 2(7)? Carried.

Section 2 agreed to.

On section 3:

Mr. Chairman: Mr. Polsinelli has said we should carry the whole section at once.

Mr. Polsinelli: I said we should deal with the whole section at once. It is the committee's decision whether or not the section is carried. That was not my endorsement. I merely indicated that you deal with section 3.

Mr. Chairman: That is fine. If you think it is such a great delay in the order of proceedings because I am reading the subsections, I will simply call section 3 and then you can tell me if any members wish to speak on any of the subsections under section 3.

Mr. D. R. Cooke: Clause 3(1)(i): I was impressed with the argument of the Canadian Bar Association--Ontario that perhaps that is an area of jurisdiction that should be reserved to the Lieutenant Governor in Council, as opposed to the committee.

Ms. Gigantes: Subject to the approval of the Lieutenant Governor in Council.

Mr. D. R. Cooke: The argument of the CBA-O, as I understood it, was that the Lieutenant Governor in Council should make those decisions, not the committee making decisions with the approval of the Lieutenant Governor in Council.

Ms. Gigantes: It is like a proposed list of senators from a province, I think. You keep offering a list until somebody says, "Yes, you have it right." Is that not the way it works?

Mr. D. R. Cooke: I suppose that is the way it is being suggested. I would feel more comfortable if clause (i) were removed from subsection 3(1) and a subsection existed which gave that power directly to the Lieutenant Governor in Council.

Mr. Chairman: I will give you the opportunity to make that a motion, if you wish, in a moment. I think Mr. O'Connor wants to speak to that same point and we could hear his explanation. I will give you the floor back, Mr. Cooke, if you wish it.

Mr. O'Connor: I was also impressed with the CBA-O on that particular point and would agree with my friend's suggestion that it be removed from there and be given to the Lieutenant Governor in Council as a power, rather than only approval by him.

Perhaps we can gain the assistance of legislative counsel as to how that might best be achieved. I think we would also have to deal with clause 8(1)(f) when dealing with that section and similarly delete it from there and put it somewhere else.

Mr. Chairman: Does legislative counsel wish to make any comment with respect to clause (i)?

Ms. MacKinnon: I think we could achieve what you want to achieve by making a separate subsection and providing that regulation be made by the Lieutenant Governor in Council. Subsection 4 would read: "The Lieutenant Governor in Council may make regulations prescribing courts and tribunals in which paralegal agents may act," etc.

Mr. Chairman: Does that satisfy you?

Mr. D. R. Cooke: That is fine.

Mr. Chairman: Could legislative counsel draft something out in rough form now, put it in the hands of Mr. O'Connor and Mr. Cooke, and we can continue on and come back? We have not closed off this section. We will get

some specific wording for you. I will put it in your hands as soon as legislative counsel can draft it. It should be fairly straightforward; you move it and then we can proceed.

Any other comment on section 3 or any of the subsections? They are all still open down to subsections 3(2) and 3(3).

If the members of the committee are prepared to proceed, while we are awaiting the amendment to clause 3(1)(i), a motion which will approve section 3 and all of the subsections with the exception of clause 3(1)(i) can now be carried, if that meets with your approval. So we will do all of section 3 with the exception of the clause 3(1)(i), of which you are aware.

Shall all of the subsections under section 3 except for clause 3(1)(i) carry? Carried.

Mr. Chairman: We still have clause 3(1)(i) to deal with. We can go to section 4 and then I will come back.

On section 4:

Mr. Chairman: Is there any question on section 4? Shall section 4 carry?

Section 4 agreed to.

On section 5:

Mr. Chairman: Shall section 5 carry?

Ms. Gigantes: That is the section on which I would like to note our concern. I have forgotten the name of the witness who came before us, but he was the gentleman who acted on behalf of the community group in his area. I am concerned that, given the implications of this clause, it may be that he, if he were in a situation where his community association wished to pay him for his services, might somehow be held responsible as having infringed the rules of this act.

Mr. Chairman: The gentleman you are referring to--Do you have the summary of recommendations prepared by the research staff? On page 5, about midway down, it says, "Section 5, Unauthorized practice": the KTVA, that is the group you are talking about.

Interjection: Kingston Township Voters Association.

Mr. Chairman: Kingston Township Voters Association.

Ms. Gigantes: That is correct. He was in the position where he was acting on behalf of his association before the Ontario Municipal Board. He was doing it strictly on a volunteer basis. But certainly it will happen from time to time, I think probably frequently, that groups in that situation will call upon somebody who is not a lawyer to act on their behalf and may very well wish to pay such a person. I know of cases where that has happened. I am afraid this may be too restrictive. I would like some comments from the proposer of the bill, if he could.

Mr. O'Connor: I have some concern about that representation. I gave it some thought. It occurs to me that the situation you have described is a

fairly isolated one; it is not going to occur too often. In the average situation he describes, where one of their number is articulate and knows the situation and the procedure well, he will more than likely want to continue on in a gratis capacity. He is one of their number, after all, and it is in his own self-interest to do a good job on that. The situation where they want to pay him, or he wants them to pay him, is fairly unique.

Analogize it to the situation of somebody going to the Supreme Court of Ontario, who has a particularly good friend who is articulate and who is not a lawyer, and wants to take him as his lawyer. Why should he not be able to? Your same argument would apply. Why should he not be able to take him as his lawyer? Or somebody who has a particularly good friend who has completed a first aid course and wants that friend to administer some medical service to him and is willing to pay him. Should he be allowed to?

I think not. I think that in cases where we have standards for professionals in a particular area, as well-meaning as people might be in wanting to pay friends who have some expertise in that area, they simply ought not be allowed to do that. The downside to it is three, four or half a dozen people around the province annually, whereas the intent of the section is the protection of the public generally from people who are not trained and who are incompetent.

Ms. Gigantes: I do not think that responds to my concern at all.

Mr. Charlton: Perhaps I could make a few comments to make it a little clearer to the proposer. Our concerns here are far less focused on the courts than they are on the situation of tribunals. There are all kinds of tribunals that go on in this province that you are aware of, although you may not have participated in them, where very particular expertise is sought, under the Environmental Protection Act, under the Environmental Assessment Act, under the Consolidated Hearings Act, where the agent which a community groups seeks, and perhaps because we do not have any legislation in this province to deal with intervener funding. That legislation, if and when we ever get it, may resolve this situation, but you have a community group which is out trying to raise funds to participate in the process and it cannot afford to hire the lawyer or the paralegal and the expert. It ends up with the expert, a university professor who has done studies of landfill sites or a hydrogeologist or an urban planner or whatever the case happens to be, somebody who has specific expertise in the field that the hearing is dealing with but who is not a registered paralegal and therefore would not be eligible to represent that group. It would have to hire two.

That is the concern we are expressing here, that with this section you are perhaps excluding some, not fly-by-nights, but very specific expertise.

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Mr. Polsinelli: I just wanted to add to that point prior to Mr. O'Connor's responding. Look at the situation, for example, of urban planners. There are planners who generally also act as consultants for their clients and pilot a rezoning proposal before the municipal council. In effect they are representing an individual. They are not lawyers and they are representing an individual before a tribunal where that individual's rights are going to be determined. As I read section 5, in combination with the definition of paralegal agent, that urban planner would no longer be able to represent his client before municipal council or the Ontario Municipal Board.

Mr. O'Connor: Sure he could, absolutely. This act deals with--

Mr. Polsinelli: A paralegal agent.

Mr. O'Connor: --provincial offences court, small claims court and landlord and tenant matters. It does not deal with municipal councils.

Mr. Polsinelli: Section 5 says: "No person, other than a registered paralegal agent whose registration has not been cancelled or suspended, shall practise as a paralegal agent or hold himself or herself out as being qualified to practise as a paralegal agent."

"Paralegal agent" has been defined as a person "who acts or holds himself or herself out as acting, on behalf of another person for a fee, in a proceeding in a court of law"--a municipal council is not a court of law--"or before a tribunal or other adjudicator in which that person's rights or liabilities are determined."

Unquestionably, when a person is before a municipal council asking for a rezoning he is asking for an adjudication on his rights or liabilities. An urban planner is not a lawyer and if he is not registered under this act as a paralegal agent, in my interpretation he would be precluded from representing his client before municipal council.

That would apply also to the position that is being brought forward by the New Democratic Party in terms of environmental assessment hearings and so on down the line, the hundreds of tribunals that exist in this great province of ours.

Mr. O'Connor: Not so, absolutely not. Municipal council is not a tribunal or an adjudicator.

Mr. Polsinelli: It is not inherently.

Ms. Gigantes: But the Ontario Municipal Board--

Mr. O'Connor: No, it is not. It is a municipal council.

Mr. Polsinelli: A municipal council is acting in a quasi-judicial capacity when it is adjudicating whether a certain piece of land should be rezoned.

Mr. O'Connor: A municipal council is not an adjudicator as such.

Mr. Polsinelli: You ask the many people who have had rezonings turned down whether the municipal council adjudicated on their rights to rezone a piece of land.

Mr. Guindon: But can he not just represent them as an agent?

Mr. Polsinelli: No.

Mr. Guindon: Why not?

Mr. Polsinelli: Because under this act he cannot represent them.

Mr. Guindon: As a free agent he can.

Mr. Polsinelli: If he does not get paid.

Mr. Guindon: He gets paid as a planner. He does not have to charge them as an agent.

Mr. Polsinelli: If he does not get paid, and even if he does not get paid this act says he cannot do it unless he is registered.

Mr. O'Connor: In one of the courts that is prescribed under section 8.

Mr. Polsinelli: That is not what section 5 says.

Ms. Gigantes: I know of many cases that have gone before the OMB in the Ottawa area where, in fact, if a community group had to make a choice between two representatives it might well drop the lawyer on the case and say: "What we need is this expert. Now we need to pay for the expertise." That person then would be representing that group as an agent before a tribunal determining rights of that group. I just am concerned about that.

Mr. O'Connor: Okay. It never occurred to me that a municipal council was a tribunal or an adjudicator in the sense that was intended in the act. If there is some question, then perhaps we should ask the experts whether that interpretation could be drawn from the definition of "paralegal agent." Then we need some tightening up in the definition section to preclude that because that is not the intention of this statute, of course.

We have not come to the definition section yet. We are doing it last, I guess. Is that correct, Mr. Chairman?

Mr. Chairman: That is the reason we are leaving it to the last.

Mr. O'Connor: All right.

Ms. Gigantes: Then I suggest we set aside section 5 for the moment, until we discuss this. It seems to me we can discuss the content of what we are raising under this clause, rather than talking about the definition. The definition flows from what we mean by section 5.

Mr. Chairman: From what I am hearing on all sides, I think there is agreement that it is not the intention to preclude this kind of a representative, namely a planner-consultant, from appearing before a municipal council. If I understand what Mr. O'Connor is saying, it is a question of finding the wording that would allow that very clearly.

I have asked legislative counsel to look at that. I do not know whether you have any suggestions as to how that might be accomplished. Do you want to go first?

Ms. Gigantes: I would like to speak a little bit more on this concern. While I think we all understand what we are talking about here--at least we have some understanding--I would like to focus on the Ontario Municipal Board rather than the city council, because I think that, and the tribunals that were mentioned by Mr. Charlton, is where we are going to see a lot of that kind of difficulty with section 5.

I do not think it is easy to write a definition that is going to say, "It is okay in cases like this, when you are hiring a particular expert." Once

you have started saying that, people can claim to be experts and act as agents. I do not want to rule out something that now has a fairly good standing in Ontario and has served people very well when they go before provincial tribunals.

It happens on tax assessment too. The best person to represent you is not always a lawyer. It could be an ex-tax assessor.

Mr. O'Connor: As a suggestion, perhaps the way to deal with that situation--and I tend to agree with my friends that there is a problem there--is in the certification process which will be developed by the governing body, the committee of the Law Society of Upper Canada, whereby people with certain qualifications can receive certification. It is broad enough and open enough to allow them to do that. People with certain qualifications in certain areas can receive certification to practise in specific instances.

We already have the precedent in the legal profession whereby that is done frequently from province to province and from common law jurisdiction to common law jurisdiction. One jurisdiction, for purposes of allowing someone to appear in its courts on a specific case, will waive all its educational and certification processes and, because he has been deemed to be an expert and is a lawyer in another jurisdiction, a person is allowed to practise in that one case in that one jurisdiction. There is that precedent having been set from one common law jurisdiction to another. Maybe that is the way in which we can go about it.

As I think I pointed out to my friend yesterday in a private conversation, clause 3(1)(c) is broad enough to permit the committee to take that kind of situation into account. Perhaps legislative counsel can also assist us.

Mr. Chairman: When we get a little further into the debate, I am going to ask legislative counsel to make a comment, but I will go back to Ms. Gigantes first.

Ms. Gigantes: Because of some input from our research staff, I think we should call upon her for a comment too, because she has some ideas on the subject that may be useful to us.

What seems to be developing here as a notion from Mr. O'Connor is that people who want to practise, say, as people who appears before the Assessment Review Board on behalf of a bunch of condominium owners would get themselves listed somehow as certified.

Mr. O'Connor: No. In the case of the man from Kingston, again, I think he would have a great deal of difficulty establishing his credibility as an expert in that area. He is one of their number and he seems to have taken more of an interest in it than the rest of the condominium owners. I do not know whether that qualifies him. He may well have to defer to a paralegal or act for no fee, and so be it, in those rare cases where that occurs.

Back to the situation of the University of Toronto professor--

Ms. Gigantes: What--

Mr. O'Connor: Hang on now. Back to the situation of the professor of land use planning appearing before the OMB, that is an entirely different

situation from the guy who is one of the number of condominium owners himself and who has read the books on that. You could tell by the quality of his presentation that it was a self-taught, self-educated process that man had gone through.

Ms. Gigantes: That is not a bad way to learn, in my experience.

Mr. O'Connor: I am sure it is not a bad way to learn.

Ms. Gigantes: What would you do with the professor, have him registered on some kind of list of experts in Ontario?

Mr. O'Connor: No. Upon presentation of his credentials to the governing body, it would determine that he is, in fact, an expert on land use planning and could represent them for this particular case. As I say, it is a very simple process.

Ms. Gigantes: Anybody who is familiar with the process the communities or groups go through when they have to go through a provincial hearing, whether it is at the Assessment Review Board or the Ontario Municipal Board or environmental assessment or whatever, knows that it takes a long time for those groups to get together.

If you are going to ask them to clear somebody to act as their agent through a piece of legislation before they can hire that person to do a piece of expert presentation for them before a tribunal, I think you are tying communities and groups of people up in knots in terms of--

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Mr. O'Connor: It is a simple, one-day procedure. You submit the man's qualifications and ask for a certification for purposes of appearing before the OMB. They look at it, they see he is a professor of land use planning at the University of Toronto--

Ms. Gigantes: If you sat on that board, you would say that gentleman from Kingston was not an expert, he did not have the credentials. Who are you to decide? They decide.

Mr. O'Connor: I would examine his credentials, but I would have some doubts about him.

Mr. Polsinelli: Mr. O'Connor, how about a tenant in the rent review process, one of a tenants' association representing his group before the rent review board?

Mr. O'Connor: That I would have some trouble with, if he is getting paid.

Mr. Polsinelli: Oh, go on. Even if he is not getting paid, he cannot do it under this.

Ms. Gigantes: Is that not ridiculous?

Mr. O'Connor: Yes, he can; sure he can.

Mr. Chairman: He has to charge a fee for this bill to be applicable.

Mr. Polsinelli: Where does it say that in section 5?

Mr. O'Connor: If people are going to set themselves up as experts and represent others for a fee before these tribunals, they should be qualified. The tenant, as well meaning as he is and as self-educated as he is, may not know the Landlord and Tenant Act. He may be doing a disservice to himself and his fellow tenants. That is what we are trying to--

Mr. Polsinelli: No, this is the rent review legislation we are talking about now, not the Landlord and Tenant Act.

Mr. O'Connor: There is not a more complicated piece of legislation in this province in that sense.

Mr. Polsinelli: In many situations, you have tenants' organizations that are formed, and some of the tenants representing the organizations would represent the building before what was then the rent review board.

Ms. Gigantes: And they know the law better than lawyers they could hire.

Mr. Polsinelli: Many of them know it a lot better than lawyers, I agree with Ms. Gigantes on that. Under this legislation, they would not be able to do it.

Ms. Gigantes: They have hired accountants.

Mr. Chairman: If I might, Mr. Partington is next, but before I go to him, under definitions, Mr. Polsinelli, section 1, the definition of a paralegal agent does very specifically indicate that person must act "on behalf of another person for a fee." If the person does it for nothing, then this bill would not be applicable.

Ms. Gigantes: We all understand that.

Mr. Chairman: No, Mr. Polsinelli did not.

Mr. Polsinelli: I did not understand that, Mr. Chairman. I do understand it now. Thank you.

Mr. Chairman: All right. Thank you. I just wanted to clarify that point so that--

Ms. Gigantes: I made it very clearly when I started speaking on this issue.

Mr. Chairman: We are in fact talking about someone whose credentials may be questionable, or he may not have credentials at all--

Mr. Polsinelli: Section 11.

Mr. Chairman: --but may charge some modest fee in an informal sense, representing a group before these various tribunals. That is what we are trying to come to grips with.

Mr. Partington: I want to underscore Mr. O'Connor's concern about a member of a group who is prepared to represent the group for a fee, although it might be done on an ad hoc or an individual basis. I think the danger is

that an individual might convince a group to retain him on that basis and that person may not be qualified to do the job, but there are experts whom this bill is trying to address who have a training to do an adequate job.

I think it is important because, yes, you may find an individual in a group who can do a good job, but it is more likely than not that you will probably find people among a group who, although they may hold themselves out as qualified, are not. The risk there is that in an attempt to do a service, in fact the group will suffer. I think it is pretty important to make sure that groups are protected against that occurring.

Ms. Gigantes: I cannot believe Conservatives are suggesting that a group that comes together around an issue at the community level cannot have the right to hire one of its members who has satisfied the group he would provide some kind of expert help in terms of meeting the group's needs, and should not have that right. That is utterly extraordinary.

I know of people in rent review where you are dealing with a building with retired accountants, you know, a retired Auditor General of Canada. If the tenants' group decides they are going to give a fee to this person for all the hours of work that are put in in terms of presenting a case, are you going to say no, they cannot? Come on.

Mr. O'Connor: To take that same example: What if he put in lots of hours and was self-taught in the art of surgery and he started carving up his fellow apartment-dwellers? Would you suggest he should be allowed to go ahead? He is well meaning, he is self-educated, he is a former qualified person in another area, he is articulate. Come on. We are trying to establish and ensure that qualified people are doing these kinds of things.

Ms. Gigantes: There is a very long stretch of the imagination that makes an analogy between surgery and the presentation of a case before the rent review board.

Mr. O'Connor: Not when you look at the current rent review legislation. It is as complicated as brain surgery.

Mr. Chairman: Ms. Gigantes, are there any amendments you would like to propose in connection with the fundamental thrust of the point you are trying to get across? I think we understand what Mr. O'Connor is saying, but we have a divergent view coming from other speakers. If you have an alternative amendment--

Ms. Gigantes: If I had an alternative amendment, it would be before you. I raised this question when the gentleman from Kingston was before us; it is a question I have raised several times during the course of the presentations we have had. It remains a concern of mine. I do not see a way of phrasing matters so that the concerns I have are going to be met. Obviously, what we have from the Conservatives is the suggestion that my concerns are not important and, in fact, when we are talking about somebody who represents a group of tenants, we have to treat him like he is doing heart surgery.

Mr. Chairman: If I could respond as one who has been noted for his presence within the Conservative Party: I happen to be sympathetic to your views. Let us not put everyone in the same basket--

Ms. Gigantes: Then maybe you have an amendment.

Mr. Chairman: I am working diligently at getting an amendment that may go forward.

Ms. Gigantes: I think our research--

Mr. Chairman: I am going to call upon research now to make a comment that will clarify this entire matter.

Ms. Evans: One method of dealing with this issue was proposed by the man from the Kingston Township Voters Association. It was to leave a category of unregulated paralegals, such that you would have various tiers in the delivery of legal services: barristers, solicitors, regulated paralegals and unregulated paralegals.

His solution was that a person then would be able to advertise himself as a registered paralegal or a paralegal agent under the discipline of the Law Society of Upper Canada, for example, and the consumer would then be advised by virtue of that designation that there was some kind of regulatory authority. That, however, leaves open the possibility of other paralegal agents acting in an unregulated environment without prosecution, save as the Law Society Act would prosecute.

Mr. O'Connor: In fairness, I think that was also what Mr. Ruby was suggesting with regard to his overall approach to the bill. He felt that in dealing with those who go into the minor court system and the tribunal system, something like this bill was worth while but, as he put it, he felt he could deal with those people who are doing wills, uncontested divorces and incorporations under section 50 of the Law Society Act.

I have some concerns about his optimism in that regard; I think it is overwhelming them and getting out of control. But his comment would support your approach to dealing with this, although he did not delineate the two categories of certified and uncertified paralegals.

Ms. Gigantes: I think what Mr. O'Connor is addressing is not quite what was being suggested by our researcher. I think what is being suggested to us is that we have an additional clause which says that people shall not be automatically prosecuted as nonregistered paralegals if they perform an agent's role and get paid for it. They simply shall not be advertising themselves as registered agents.

1630

Mr. O'Connor: That is another way of doing it, yes.

Mr. Polsinelli: I was going to ask Mr. O'Connor another question related to the same subject, that being the exclusions section 5 would instil in law. It would have to do, for example, with the social service agency representing individuals, let us say, before the Social Assistance Review Board. If you have a paid social worker working for an agency, she is receiving a fee and at the same time representing an individual before a tribunal, the SARB.

As I read this legislation, she would no longer be able to do that because the Social Assistance Review Board is not one of those agencies that is listed in section 8, and section 5 would preclude her from acting and representing that individual because she is receiving the fee through her employment.

Mr. O'Connor: Except for the fact that section 8 provides for adding to the list of prescribed tribunals according to the wishes and the wisdom of the governing body from time to time. Now we have changed that process because this motion will change that process.

As Mr. Ruby said, he thinks there are perhaps 100 tribunals in the province whose governing statutes provide for agents to appear before them and they should be added as the need arises and as the wisdom of the committee thinks fit. I would agree they should be added but, in the meantime, going back to my argument before, is it not open to the governing body to certify particular experts upon presentation of their credentials for specific purposes? That is part of the grandfathering process, which we have not discussed but which we should discuss, of certifying present expert and qualified paralegals without requiring them to go through the two-year or three-year community college process upon the passage of the bill.

Mr. Chairman: Before I go to Ms. Gigantes, there is a question I have. Just by way of clarification, is it your intent to disallow the case I think was described earlier of a tenants' association of 100 people in an apartment building going to rent review?

One of the 100 noncredentialed individuals within that building--because the individual has taken a particular interest and may be the president of the association or whatever, someone who has no credentials, perhaps a housewife who has spent a lot of time on this case--for a small fee of whatever kind, perhaps just to cover expenses driving back and forth or related to the hearing itself, would not be allowed to act on behalf of those particular tenants. Are you saying that is the intent of what you want to do?

Mr. O'Connor: Emotionally and sympathetically, no, that is not. I agree with the phraseology in which you put it. You are building a good case for that housewife to act. However, it would be a simple process for her to apply to the paralegal agents committee and ask for a certification with respect to that one incident. Upon its determining she had some knowledge and expertise in the area, the committee could so certify her.

The problem becomes this. She represents this one group and because of her work in the area does a good job, decides that she wants to go into the field and represent other groups and becomes a paid paralegal for other tenancy organizations around her city, town or whatever.

There is a point at which I suggest, yes, she should gain the necessary qualifications if she is going to be representing the public at large and generally, but exceptions can be made for the one incidence of the one housewife with her own self-interest and her own group. Sure, there can be flexibility in the process to allow her to do that.

Ms. Gigantes: Could I speak to two matters? First, I would like to go back to what Mr. Polsinelli was raising as an issue, which I do not believe is an issue. I have given some thought to this matter and I think that anybody who is appearing, such as a social worker, an immigration counsellor or whoever, is not receiving the fee from the client.

Mr. Polsinelli: That is not what the definition says.

Ms. Gigantes: Then we had better make it clear that a person acting as an agent, who is being paid while acting and in association with the acting, if not receiving the fee from the person or group on whose behalf he or she is acting, is not--

Mr. O'Connor: They can do that, actually. They are not part of the bill then at all.

Ms. Gigantes: I do not think they are. I do not think there is a problem with that at all. I think one can argue that, in a legal framework, such people are actually acting indirectly and may be at huge arm's length under a lawyer's supervision. They do not go in there and carry out any presentations without--

Mr. Polsinelli: If they are under a lawyer's supervision, the bill does not apply.

Ms. Gigantes: That is right.

Mr. Polsinelli: But if your argument were to hold water, what would prevent me or any group of individuals from incorporating a company and acting as paralegals? Then they are not receiving remuneration for their service from their client; they are receiving remuneration from their company, which bills the client. It is exactly the same type of situation as the social worker who is receiving payment from her agency to represent a citizen before the SARB.

Ms. Gigantes: I think the real question of what you were raising is whether there is ultimately legal supervision.

Mr. Polsinelli: No, that is not the question at all.

Ms. Gigantes: I suggest to you that the cases you are raising of a social worker, an immigration counsellor or whoever are people who are at arm's length but who are acting under the supervision of a lawyer.

Mr. Polsinelli: Your constituency assistant who represents your electorate before the SARB--

Ms. Gigantes: Or me.

Mr. Polsinelli: --would be acting as a paralegal, because she or he is receiving payment from you, is receiving a fee for her services and is representing an individual before a quasi-judicial tribunal. She would not be able to do that under this legislation.

Ms. Gigantes: That is a good question.

Mr. Polsinelli: Mr. O'Connor's assistant may appear, because he is a solicitor.

Ms. Gigantes: True enough.

Mr. O'Connor: My constituency assistant is under my supervision as a lawyer and can do it.

Ms. Gigantes: The second matter that I want to put on record is that I do not look upon the issue I am raising about section 5 as a question of whether the expert housewife does it once and nobody minds and she is registered in a simple fashion. I have never seen such things carried out in a simple fashion, by the way, by any registering body. I do not think that is the situation at all.

As this society becomes much more certain of its legal process and its

legal due, and that is happening by enormous leaps and bounds, we are going to have more and more communities where people can act quite legitimately as experts in presentation in precisely the kinds of cases we are discussing here. In my view, there is no good reason why they should not do so.

In fact, I would suggest to you that there have been times when I have watched community groups pay for a lawyer to go before the Ontario Municipal Board and I know very well that if, instead, they had paid the guy who is retired from a job with the geographic service of the Department of Energy, Mines and Resources to present their case, they would have had a better presentation, because the lawyer did not understand what was involved.

Mr. Chairman: Having said that, I have asked legislative counsel to try to draft something that may cover the concerns that all of you have expressed. That is quite difficult, because you are coming from different angles on this question. I suggest that we are going to have to stand down this section and think on it a little further before we vote on it. However, we do have something that is a framework--it is not specific--which legislative counsel can read to you and perhaps speak to. I will defer to her now, and see whether she has something that might do the job.

Ms. MacKinnon: What I have drafted here is really in a pretty rough form. I just want to see whether it covers the concerns you have expressed. I would suggest adding a new section that would say: "Notwithstanding section 5"--which is the unauthorized practice section--"an agent who is not registered under this act may act in a proceeding other than a proceeding in a court of law." That would make it apply only to tribunals and other adjudicators and not to courts. "They may act in a proceeding other than a proceeding in a court of law on behalf of another person, for a fee, if the agent has expertise in the particular area to which the proceeding relates." The problem with that is it will be difficult to determine in any one case what qualifications are required and who is going to determine whether the agent meets the qualifications.

1640

Mr. O'Connor: Just to lend some support to that approach, is that not exactly the circumstance that prevails now under the Law Society Act, section 50, which says that no one shall act as a barrister and solicitor who is not a barrister and solicitor? The question that arises in every case that comes before the courts is, where is the line? Is the service that was provided in that uncontested divorce one of providing only the kit only or did the person cross the line and actually provide legal services?

I think you are suggesting we approach it in the same manner and that the question that will be relevant in all cases that are challenged, if someone is challenged under that section, is whether they were expert, qualified or whatever word we choose to use.

Ms. MacKinnon: That is right.

Mr. O'Connor: Whether they in fact crossed the line. They would be seeking to show they had in that case crossed the qualification. You will never get wording that is going to preclude all litigation absolutely but that is perhaps the way to approach it.

Mr. Chairman: Let me ask a question of the committee. If this covers generally what you want in section 5, we can stand down section 5 and then

come back when we have perhaps tighter wording, but that is the essential thrust of it.

Mr. Polsinelli: Is that not in effect really changing the whole purpose of the act? As I understood it, it was to protect the consumers. What would now be happening would be that you are protecting paralegal agents by allowing them to call themselves registered paralegal agents. In effect, the only protection the consumer has is to search for a registered paralegal agent who will presumably be able to charge more than the unregistered paralegal agent because he is controlled, governed and regulated. Does it not change the thrust and the intent of the bill?

Ms. Gigantes: Can I tell you another thought our clever research person has come up with? It is that we change section 5 so that it says, "No person other than a registered paralegal agent, whose registration has not been cancelled or suspended, shall practise as a registered paralegal agent or hold himself or herself out as being qualified to practise as a registered paralegal agent."

This means that as long as you are not advertising and saying, "I am a registered paralegal agent"--

Mr. Polsinelli: You can act as a paralegal agent.

Ms. Gigantes: --"you can act as a paid agent."

Mr. Polsinelli: I think that is essentially the same recommendation just read out to us a while back; the same effect.

Ms. Gigantes: No, that attempted to define another category that would be called "expert unregistered."

Mr. Chairman: Do you want to speak to that?

Ms. Evans: You can see that the amendment attempts to carve out from the prohibition an acceptable area for unregistered persons to practise, whereas this approach just carves out, from a great unregulated area, a little bit of a regulated area.

Mr. Polsinelli: It goes back to the comments I made just a second ago. In effect, what you are creating is an elite within the paralegal agents' community.

Ms. Evans: Yes, creating a professional class.

Mr. Polsinelli: You are saying we have registered controlled paralegal agents and we have unregistered uncontrolled paralegal agents. What greater protection is offered to the public, to the consumers, under that type of situation?

Mr. O'Connor: I think the protection is in the words "hold himself or herself out as being qualified." The person who is not a registered paralegal agent would not be able to hold himself out. Therefore, no advertising--

Mr. Polsinelli: Come on; really. If you are not registered you can

act as a paralegal agent but you cannot hold yourself out as being qualified, but if you are registered you can hold yourself out as being qualified?

Mr. O'Connor: What I think that means is it would preclude that person from doing any advertising or approaching the public and saying, "I am a paralegal agent."

Mr. Polsinelli: I disagree.

Ms. Gigantes: No, it would say they could not advertise and say, "I am a registered paralegal agent."

Mr. Polsinelli: That is right. That is the only difference. You are giving the registered paralegal agents an excuse to charge more for their services.

Mr. Chairman: Not necessarily.

Ms. Gigantes: Yes.

Mr. Chairman: I do not know that it necessarily follows. You are certainly establishing two groups.

Ms. Gigantes: Yes.

Mr. Chairman: If the basic, fundamental argument is that you want some other informal group out there to be able to serve the public at a very minimal cost at some point and this is one way of achieving that end while at the same--

Mr. Polsinelli: But if the purpose of this is consumer protection legislation, if we are out there to help the public, are we helping the public by creating an elitist group of paralegal agents who can put "registered" before their names and charge more? Should we be deliberating that?

Mr. Chairman: I suggest your choice of the word "elitist" is a little ill-chosen. I am not debating it with you other than to say that there are a number of protections for consumers built into this under the category that would be left for a registered paralegal agent, who can only serve, hang out his shingle and advertise in certain prescribed circumstances. That is the protection for the public. To suggest the public is given more protection now--

Mr. Polsinelli: I did not say that.

Ms. Gigantes: The problem with what we are proposing--I have no objection to it but I agree with Mr. Polsinelli that what we are doing is talking about three categories of people who act on a paid basis in these kinds of proceedings. We are talking about lawyers, registered paralegals and other people who act as agents and get paid who are not registered and cannot call themselves registered paralegals. The problem with that from the point of view of the approach Mr. O'Connor has taken in this bill is that, for example, the disbarred lawyer could still act as a paralegal for a fee. He would just not be able to call himself a registered paralegal.

Mr. Polsinelli: He may even get registration.

Mr. O'Connor: Along the lines of what you have suggested, Mr. Chairman, may I suggest that we set aside this section. We have until next

Monday for legislative counsel, myself and anyone else who wishes to participate to work on an acceptable exception. I tend to agree with Mr. Polsinelli on the registered-unregistered thing. We could perhaps go back to something along the lines of--

Ms. Gigantes: May I check with you, Mr. Chairman? It was my understanding that on Monday we begin consideration of Bill 10.

Mr. Chairman: It is my understanding that we begin Bill 10 as soon as we are finished with this. We were going to attempt to finish this today but I do not think setting aside section 5 precludes starting on Bill 10.

Ms. Gigantes: I tend to disagree with you because I think section 5 is the heart and soul of the approach Mr. O'Connor has taken in this bill. We are kidding ourselves if we think we are going to come to an easy solution by Monday, without hours of debate around this item. If we say we are going to deal with it on Monday, we are going to have to set ourselves a time limit. If we cannot find satisfaction on this committee within a certain time limit, we will have to say we cannot be satisfied with it, that we do not have a consensus.

Mr. Chairman: It is not our intention to hold back Bill 10. The way we have the committee scheduled for next week, I am advised by the clerk that Bill 10 could be bumped one day, to Tuesday, or we could finish this in the early part of the proceedings on Monday and then move to Bill 10 right away.

Ms. Gigantes: I am willing to contemplate that only if we set ourselves a time limit on Monday. I do not want to see us getting into another three or four hours of discussion on this item. We are just going to have to deal with it.

Mr. O'Connor: That is exactly why I am suggesting putting it aside, drafting some solutions to it and coming back Monday. We will deal with it in a lot less time than if we carry on now.

Ms. Gigantes: I am not satisfied to deal with it in a lot less time because I do not think I am going to be happy with the result. I have actually spent a lot of time thinking about this.

Mr. O'Connor: I acknowledge that. You have, obviously.

Ms. Gigantes: We can go on with this debate for ever. Unless we set ourselves a time limit, I am not prepared to see us deal with this again on Monday. If we have a time limit on Monday, fine, but I am not willing to see it go on and on, which it can do.

Mr. O'Connor: What are you suggesting as a time limit?

Ms. Gigantes: You make a suggestion.

Mr. Chairman: How about an hour to try to proceed with the bill? We will set this aside, give one hour on Monday with the agreement of the committee, and then move to Bill 10.

Mr. O'Connor: The difficulty arises if we do not complete it. What do we do then?

Mr. Chairman: The committee can undo what it has done.

Ms. Gigantes: We will have to either vote for what we want or vote against what we do not like. That is it.

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Mr. O'Connor: We are all prepared to agree that on Monday, at the end of the allotted time be it an hour or whatever, a vote will be held and the matter will be concluded one way or the other and that clause-by-clause will not be left hanging to be completed at some future date. I am content with that.

Mr. Polsinelli: That is quite unparliamentary, though. We should not rush through a bill for expediency's sake. This is a very complex bill. There are a lot of ramifications. I am prepared to move from this one to Bill 10 at any time but I do not think we should rush through the debate of any particular section, particularly in such a complex bill.

Ms. Gigantes: I am willing to discuss this again on Monday only if we have an understanding that an hour will be the outside limit. I think if we put another hour's discussion on some other proposal to deal with section 5, then we have to vote either for it or against it, period.

Mr. O'Connor: I agree with that.

Ms. Gigantes: If Mr. Polsinelli still is not ready, he will be left behind.

Mr. Polsinelli: It would not be the first time.

Mr. Chairman: Let us try then. First, do we agree we will stand down section 5? Agreed.

We will agree to the one-hour limit on Monday, with certain understandings in connection with Bill 10 to proceed after that, and we will try to come up with some solution in terms of the drafting of a rewording for section 5.

Ms. Gigantes: And then the question will be put.

Mr. Chairman: And then the question will be put. After one hour, the question will be put; that is understood.

On section 3:

Mr. Chairman: We have to go back to clause 3(1)(i).

Mr. D. R. Cooke moves that clause 3(1)(i) be struck out and he further moves that the following subsection be added to section 3:

"(4) The Lieutenant Governor in Council may make regulations prescribing courts and tribunals in which paralegal agents may act and prescribing matters in respect of which they may act."

Motion agreed to.

Section 3, as amended, agreed to.

On section 6:

Mr. Chairman: Section 4 has been dealt with and section 5 has been stood down. We are at section 6.

Ms. Gigantes: We may have a problem with 6. If we go to the solution suggested by Catherine, which is "registered paralegal agents," we may have to go back to 6. This is the trouble.

Mr. Polsinelli: In fact, we also have the same problem with 7, because if we go to Catherine's solution, what are we effectively doing by allowing disciplinary proceedings? We would be bumping the paralegal agent from the status of registered to unregistered. Is it really quite a punishment? Perhaps what we should do is stand down the bill until Monday.

Ms. Gigantes: No. Can I suggest on this that if we are going to consider an amendment to section 5 that deals with the recognition of unregistered agents, then we change the definition of "paralegal agent" in the bill so that it means a registered paralegal agent? I think that will handle the other problems.

Mr. O'Connor: We are not sure that is the solution we will come up with.

Ms. Gigantes: We are not sure about that.

Mr. O'Connor: No.

Ms. Gigantes: But we can come back to that, within an hour.

Mr. Chairman: What is your wish on section 6, to stand it down?

Ms. Gigantes: No; pass it.

Mr. Polsinelli: Can I make a suggestion along the same lines. Rather than requiring every paralegal agent to maintain liability insurance, can it not be reworded so that the paralegal agent cannot act as a paralegal agent without liability insurance? "No paralegal agent shall...."

Mr. O'Connor: Rather than make that change, in that it will have to be made in several subsequent sections, we have agreed it is only to be made if we accept the solution suggested by Catherine. Why not pass these sections? If we do happen to adopt that approach, we can go back and amend those sections by putting in the word "prescribed."

Ms. Gigantes: Change the definition so that every time we say "paralegal agent" we mean registered because the rest we are not going to be talking about.

Mr. O'Connor: Yes, I am not sure we are going to adopt that approach because I tend to think--

Ms. Gigantes: I understand, but it is easier to deal with the definition than with every clause.

Mr. O'Connor: So why not pass the sections? We can amend them later if we have to.

Ms. Gigantes: I move that we vote on section 6

Section 6 agreed to.

On section 7:

Mr. O'Connor: I can tell you that section 7 is lifted almost verbatim from the Law Society Act. It is the same disciplinary procedure that now prevails in the case of lawyers. The same sections are quoted, in fact, from the Law Society Act.

Mr. Polsinelli: As you are allowing unregistered practice, allowing an agent to act as a paralegal agent, even though he is registered what we would effectively be doing here is creating a situation where the disciplinary proceedings for a paralegal agent would allow a registered paralegal agent to fall to the status of an unregistered paralegal agent but still practise. With a barrister and solicitor, it is slightly different in the sense that you are saying, "You cannot act as a barrister and solicitor."

Mr. O'Connor: We have not adopted that particular approach and there is no surety that we will.

Mr. Polsinelli: That is right, but if you do adopt that particular approach, would not a slightly stricter penalty perhaps be in order in the sense of prohibiting from acting as a paralegal agent, period?

Mr. O'Connor: I think you are ensuring that we we may not adopt Ms. Evans's approach to all of this.

Mr. Polsinelli: What I had was a suggestion.

Ms. Gigantes: I would like to suggest that we vote on section 7.

Mr. Chairman: All right. Including all the subsections?

Ms. Gigantes: Yes.

Section 7 agreed to.

On section 8:

Mr. O'Connor: I suggest we have to deal with clause 8(1)(f) in the same manner as we dealt with--

Ms. Gigantes: Can I speak to that? I do not think that is necessary at all. What we have done in the previous amendment really prescribes the--

Mr. O'Connor: I agree.

Ms. Gigantes: It is not necessary.

Mr. Chairman: Clause 8(1)(f) would stay in then?

Ms. Gigantes: Yes.

Mr. Chairman: So we can deal with subsections 1, 2 and 3, and the clauses of those subsections in total.

Section 8 agreed to.

On section 9:

Mr. Chairman: Section 9.

Ms. Gigantes: Carried.

Mr. Chairman: I assume by "carried," you mean all the subsections as well.

Ms. Gigantes: Yes.

Section 9 agreed to.

Sections 10 to 12, inclusive, agreed to.

On section 1:

Mr. Chairman: Next, the definitions and then we will do the title.

Ms. Gigantes: I think we are going to have to stand down "paralegal agent" because we may wish to deal with that definition.

Mr. Chairman: All right. Are you prepared to deal with "bencher" and "Committee," the first two?

Ms. Gigantes: Yes.

Mr. Chairman: Shall the first two definitions, of "bencher" and of "Committee," carry? Carried.

Is it agreed we will stand down "paralegal agent" and discuss that in the first hour of our deliberations on Monday? Agreed.

Does the definition of "prescribed" carry? Carried.

On section 13:

Are there any further comments? Are you prepared to pass the title of the act now?

Ms. Gigantes: We may want to call it the "Registered Paralegal Agents Act."

Mr. Chairman: Do you want to stand down the title? It is agreed we will stand down section 13, which is the title of the act, until we have dealt with section 5, the definitions of "paralegal agent," and we will then more fully discuss the title of the act.

Is there any further comment? There being no further comment, we have concluded the business of the committee as far as we can go this afternoon. It is understood that for the first hour on Monday we will attempt to deal with

the most controversial issue, that being the more precise definition of the activities of the paralegal agent.

The committee adjourned at 5 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PARALEGAL AGENTS ACT
LANDLORD AND TENANT AMENDMENT ACT

MONDAY, JUNE 8, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Guindon, L. B. (Cornwall PC) for Mr. Brandt
Jackson, C. (Burlington South PC) for Mr. Partington
Knight, D. S. (Halton-Burlington L) for Mr. Polsinelli
Reville, D. (Riverdale NDP) for Mr. Charlton

Clerk: Mellor, L.

Clerk pro tem: Manikel, T.

Staff:

MacKinnon, M., Legislative Counsel
Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Roomers' Association:

Hogan, J., Chairman
York, M.

From the Coalition for the Protection of Roomers and Boarders:

Mahoney, E., Community Legal Worker, Parkdale Community Legal Services Inc.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 8, 1987

The committee met at 3:55 p.m. in room 228.

PARALEGAL ACT
(continued)

Consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

The Vice-Chairman: The committee will come to order to continue clause-by-clause consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents. Mr. Ward, you had a procedural motion.

Mr. Ward: I want to bring to the attention of the members of the committee a copy of the correspondence we received from the symposium on paralegals that was held over the weekend, a report that includes a recommendation that was endorsed unanimously by all the participants that this bill not proceed in its present form without further input by concerned organizations and the public. In addition to that, there is the correspondence we received from the law clerks which, again, was quite critical of this committee for not having heard their concerns.

I wonder if it would be appropriate to suggest that we make some effort to hear from these groups, not that we do anything to sidetrack the committee's schedule as it is now because we are already scheduled to hear from groups on the next bill beginning at four o'clock, but perhaps, as soon as we finish the public participation process on the roomers and boarders legislation, we could continue hearings on the paralegal bill subsequent to that consideration.

The Vice-Chairman: I would rule, Mr. Ward, that the correct motion to deal with that would have to be to rescind. We will reopen the earlier motion that provided for one hour of further consideration in clause-by-clause on the bill. I would ask, were you a member who voted in the majority on that decision?

Mr. Ward: I am not sure.

Mr. D. R. Cooke: I do not understand what you said, Madam Chairman.

The Vice-Chairman: I beg your pardon; I stand corrected. Apparently, it was not done by way of motion but by way of simple agreement. If you are putting a procedural motion in front of the committee, it would be in order. Mr. Charlton?

Mr. Charlton: I just did not hear very well; that is all

The Vice-Chairman: I beg your pardon. We have a little bit of competition from the air conditioner.

I am advised by the clerk that there was no formal motion before the committee previously to provide the further one hour of discussion, after

which clause-by-clause would be completed. Since it was by agreement and not formal motion, the committee may wish to reconsider its earlier agreement. I am in the hands of the committee. Are you moving a formal motion, Mr. Ward?

Mr. Ward: Yes.

The Vice-Chairman: Mr. Ward moves continuation of public hearings on Bill 42, to recommence subsequent to the consideration of Bill 10.

The Vice-Chairman: Is there further discussion?

Mr. O'Connor: I have just received these two presentations. One was on our desk. I had not even received the one that was sent to our offices, but I have a copy from my colleague, Mr. Rowe. I have not read these thoroughly. I can comment, though, that in the case of the community colleges, I have had some considerable discussion with them, particularly with the community college located in my riding, over the past seven or eight months, with some of the administrators when I was in the process of determining what kind of educative process should be put in place with respect to paralegals.

I have not read the brief under the letterhead of Durham College, but I can tell you that the comments I received from those at Sheridan College were that, yes, they needed some lead time, but that they thought, after doing their market studies and determining what courses they would be required to put in place and hiring instructors and administrators for them, it would be a very feasible thing to teach a paralegal-type course.

They asked me if there were other courses around North America that were being taught in the United States or Canada and I was able to obtain for them quite a volume of material--I brought it with me to the last meeting but I did not bring it here today--on paralegal-type courses taught in various community-type colleges throughout the United States. I am willing to share that with them or any of the community colleges, of course.

The bill anticipates there will be some considerable lead time before it is fully implemented. I do not see a great problem. If what Durham College is saying is that it needs more time to think this through and more time to prepare, it is anticipated in the bill that it will have that time. I am not quite sure what the concern is they are expressing to us.

I do not know there is a necessity for the college system to be given more time to appear before us. We are here to determine the principles of the bill, not the mechanics. That will be done by the governing body, as set out in the bill, in association and co-operation with the community college system in the province.

1600

With regard to the Institute of Law Clerks of Ontario, I am quite surprised that it is now suggesting the act should not go forward. I was visited by Wanda M. Polman and one other person about six months ago, lobbying forcefully in my office to be included in Bill 42. They thought that it was a great piece of legislation and that they should be included. Their only concern was that they were not included. I pointed out to them that they are regulated and administered by a lawyer or a law firm, that this bill is an attempt to deal with so-called paralegal agents who are not operating under the jurisdiction of a lawyer and that there is a public necessity for it. I

went through the argument I have gone through here several times. They seemed to understand this was the thrust of the bill.

As I recall quite clearly, at that time they were quite laudatory of the bill and its aims. I am somewhat taken aback now that they say the bill in its present form should not become law, unless they mean that it should include them. That is perhaps what they mean. I guess we will have to hear more from them in that regard. I do not feel we should reopen matters today. We have an hour to discuss two simple amendments that Ms. MacKinnon and I have gone over and drafted that I think would tidy up the loose ends we were discussing upon departing last week and that would put the bill in a form in which it could be referred back to the House.

Mr. D. R. Cooke: I want to say very quickly, because I have to be at a meeting of the Board of Internal Economy right now, that I feel this organization, the Institute of Law Clerks of Ontario, surely is an organization that should be heard if any organization should be heard on this particular bill. It should be given a thorough hearing.

Mr. O'Connor is correct in saying that essentially their activities over the years have been controlled by their principals, but the fact of the matter is that they are doing the very work we are talking about when we talk about paralegals. Essentially, there are a number of people who move in and out of the clerk position in so far as working for other firms is concerned or else workg on their own. Obviously, they should be heard from.

I would like to place myself on record as supporting Mr. Ward's motion as strongly as possible.

Mr. Ward: In closing, I want to stress that my concern is very much one of process as much as anything. I think it is fair to say that although the symposium was conducted at Durham College and I suppose very much presented the perspective of educators within the province, it is also fair to say, looking at the list of attendees and delegates to that symposium, that it seemed to cover a very broad cross-section of groups and individuals who naturally would have a great interest in Bill 42. It would concern me deeply that very important players in this arena have been excluded from even having the opportunity of presenting their points of view to assist the committee in its deliberations on the bill.

The Vice-Chairman: You have heard the motion.

All those in favour?

All those opposed?

Motion agreed to.

The Vice-Chairman: The motion carries five to three. I ask the committee, under these circumstances, if you wish to proceed now in your clause-by-clause consideration of section 5, which is the point the committee reached last day.

Mr. O'Connor: Yes, I think that is why we had this hour set aside by the chair. As I say, we have done some work to resolve the difficulties that were raised by Mr. Polsinelli and I believe by Ms. Gigantes at the time. I think the amendments to section 5 and the redefinition in clause 3(1)(c) can go forward now. I do not see there would be any objection to that. I guess we

should then speak in terms of finding some additional time to hear from Durham College and the Institute of Law Clerks of Ontario.

The Vice-Chairman: On your latter part, Mr. O'Connor, I am advised by the clerk that June 22 would be the likely date for further hearings. This would be the next date that is not presently scheduled for hearings.

Mr. O'Connor: Okay.

The Vice-Chairman: The clerk will undertake to contact the groups in question.

Mr. Ward: Given the fact that we only have the two groups to hear from, I wonder if we could get back on schedule with Bill 10 and still do those clauses then. We do not have any strong feelings either way about whether we should deal with those clauses. We would not be reporting the bill until we heard from those groups anyway and I just wonder how appropriate it is.

Mr. O'Connor: Why do we not canvass those here and see whether the wording meets the needs of everybody? I think they do. We might be able to do this clause in about 10 minutes. The first group is not scheduled until 4:30 p.m.

The Vice-Chairman: I am in the committee's hands. I am advised by the clerk that you have received a motion in the name of Mr. O'Connor dealing with section 5 of the bill.

Mr. O'Connor: The difficulty, if everyone recalls, is the situation of a person who is not full time or carrying on the business of a paralegal agent, but who wishes to represent himself or herself, plus a group of similarly interested fellow tenants or people with a similar problem, and who has been nominated by that group, perhaps for a fee, to attend before a tribunal such as the Ontario Municipal Board or a landlord and tenant tribunal.

This was the particular problem of the man from Kingston. I agree there should be some consideration given to that situation. So accordingly, we have moved the amendments, as you have indicated, to section 5 by adding two subsections, which read as follows:

"Subsection 1 does not apply to a person who is not registered under this act who acts on behalf of another person for a fee in a proceeding in a court of law or before a tribunal or other adjudicator"--that is the wording from the definition--"if the person does not carry on the business of a paralegal agent."

Then to further add to what carrying "on the business of a paralegal agent" means, we have had added a new subsection: "For the purpose of subsection 3, a person shall be deemed to be carrying on the business of a paralegal agent if he or she acts as an agent for a fee in more than three separate proceedings in any 12 consecutive months."

It is a rather arbitrary number to pick, but if someone has a better number, fine. I am certainly amenable. But it would seem to me that three or fewer in a year is not carrying on the business of a paralegal and that they should be allowed to do this for a fee. It also covers the university

professor or other expert who is called by a group to carry their case before a particular tribunal.

That is my suggestion as to how to resolve this problem and I think it could well do it. The other amendment is something all together different and we will get to that, the one to section 3.

The Vice-Chairman: That one deals with section 3 and we will deal with that another time.

Mr. O'Connor: Yes.

The Vice-Chairman: Members of the committee, I will take that as Mr. O'Connor moving that amendment to section 5. Any speakers, discussion?

Mr. Poirier: I would like ask a question of Mr. O'Connor pertaining to the definition in subsection 5(3). Could you give me other examples of who would be called upon to do this kind of work for three or fewer sessions in a year, for example? You mentioned a university professor.

Mr. O'Connor: The example was raised last time of a university professor in land-use planning who had been asked by a particular group of residents to present their case, for instance, to the OMB. Although his full-time job is lecturing at the University of Toronto, because he had expertise in their particular problem, he would come to the OMB and carry their case. If the section was not amended as we have indicated, he would be barred because he would be carrying on a paralegal business and would not have been so registered. We have made the exception for people in infrequent situations.

1610

I have suggested the number of three times in a year. Maybe the proper number is two or maybe it is five. I do not know, but it would allow that situation to occur, as well as the situation of the man from Kingston, who is not associated with any university. He was one of a group of tenants who educated himself about the problem of that group of land owners and represented them before the various tribunals they were appearing before. It seems to solve the problem that both Mr. Polsinelli and Ms. Gigantes had.

The Vice-Chairman: Do you have further comments then, Mr. Poirier?

Mr. Poirier: No.

Mr. Charlton: Looking at the two subsections together, they would appear to deal with the question we raised. I still feel a little bit uncomfortable in relation to the actual definition of paralegal agent in section 1. I would certainly like the opportunity to consult with my colleague Ms. Gigantes, before I actually make a final decision. Like I say, in looking at it, it seems to cover it in this section. I am still somewhat uncomfortable when I juxtapose that with the definition. Unfortunately, Evelyn is stuck in the House on freedom of information. I would like the opportunity to try to consult with her, if I could.

The Vice-Chairman: We are in the committee's hands, Mr. O'Connor. Would you wish first to address that--

Mr. O'Connor: I have raised my case. As my colleague Mr. Charlton says, it looks as if it does the job. I suggest it does.

The Vice-Chairman: Is it the committee's wish to continue discussion, to stand it down for a bit, or to vote on the matter? Can I have some direction from the committee as to where you--

Mr. O'Connor: Can Evelyn be retrieved? Do you know what stage they are at in the House?

Mr. Ward: They were on definitions when I left, Madam Chairman.

The Vice-Chairman: We have, of course, a difficult conundrum for a member who has responsibility for two separate pieces of legislation being dealt with concurrently, one in the House where the member for Ottawa Centre (Ms. Gigantes) is currently and one down here, where regrettably she is not. Mr. Ward, do you have a suggestion?

Mr. Ward: I am a little uncomfortable in speaking to the specifics of the amendment, given the fact that we have had great difficulties on the very basis of the definition of a paralegal. You know certainly my position on that from motions that were put previously before we got into clause-by-clause, but I really think under the circumstances that it would be far better to defer consideration of this until we reconvene on June 22. I think there will be plenty of time, and both Mr. Polsinelli and Ms. Gigantes should be here, to deal with it. I have great discomfort in supporting or not supporting this definitional amendment right now.

The Vice-Chairman: I am sorry?

Mr. Ward: I am moving that this be deferred until June 22.

The Vice-Chairman: A deferral motion is not debatable, I do not think.

Interjection.

Mr. Ward: Give it a try, Susan. We might be able to--

The Vice-Chairman: Just a minute. A motion to defer is not debatable, the chair has said with greater confidence than authority.

Mr. Ward: I challenge the ruling of the clerk.

The Vice-Chairman: I will therefore put the question. All those in favour of deferring the matter?

Mr. Charlton: Were there specifics with the deferral, because I could not hear it?

The Vice-Chairman: There is no date specific.

Mr. Ward: I said June 22.

The Vice-Chairman: I beg your pardon.

Mr. Ward: It is understood that is subject to hearing from the last group.

The Vice-Chairman: I assume you would like the specific of the motion. I understand it is to defer to June 22. Mr. Ward, was your motion to defer to a point before, or after, the deputants were heard on June 22?

Mr. Ward: After the deputants, on June 22.

The Vice-Chairman: Until after.

Mr. Ward moves that we adjourn the debate on Bill 42 until our meeting on June 22.

All those in favour of the motion?

Mr. O'Connor: It is not an amendable motion. It is not debatable by the committee.

The Vice-Chairman: Yes. Wait a minute. Sorry, hold on, excuse me. I am sorry, I am advised by the clerk that a motion to defer is not amendable. My apologies. Because it was a motion to adjourn the debate, that is the reason.

Mr. Ward has moved that we adjourn the debate on Bill 42 until our sitting on June 22, following the hearing of the deputations.

All those in favour of the motion?

All those opposed?

Motion agreed to.

The Vice-Chairman: Mr. O'Connor moves that when the matter is brought back before us on June 22, each of the two delegations be allotted a half hour or 40 minutes, following which there will be clause-by-clause analysis and that we set up the schedule to accommodate that situation.

Mr. O'Connor: How long have we been giving on this?

The Vice-Chairman: I am told by the clerk that 45 minutes has been the usual period of time.

Are there any other speakers on the motion?

All those in favour of the motion?

All those opposed?

Motion agreed to.

The Vice-Chairman: I think then, members of the committee, we can have a short--

Mr. O'Connor: Are we going to do 3(1)(c)?

The Vice-Chairman: We cannot, Mr. O'Connor, because we have adjourned debate on Bill 42.

Mr. O'Connor: I thought we adjourned debate on section 5?

The Vice-Chairman: No, we adjourned debate on the bill. I suggest we have a short recess and come back for 4:30 p.m. to hear deputations on Bill 10.

The committee recessed at 4:19 p.m.

1638

LANDLORD AND TENANT AMENDMENT ACT

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

The Vice-Chairman: We are ready to begin consideration by the standing committee on administration of justice on Bill 10. In submissions today, we will begin with our initial submission from the Roomers' Association. John Hogan and Ms. Martina York, will you be good enough to step to the front. Join us here at the foot of the table, if you will. Make yourselves comfortable as long as you are right on top of a microphone and Hansard can pick up your remarks. Your submission, Equal Rights for Roomers, has been duplicated and is in front of the members of the committee. I will simply turn it over to you and indicate that we have about half an hour in the schedule from now.

ROOMERS' ASSOCIATION

Mr. Hogan: Good afternoon. My name is John Hogan. I am chairman of the Roomers' Association. With me today is Martina York, who is a resident in one of the local rooming houses. We will have more to hear from her later.

In the audience today, we have more members of our association. We are here today to ask for equality, to ask for the same protection that the Landlord and Tenant Act already gives to every other tenant in the province. We fully support Bill 10 and urge this committee and the Legislature itself to ensure that this bill gets quick passage and that roomers are finally given the protection they deserve.

Why do roomers want this bill? It is not because roomers are excluded from the Landlord and Tenant Act. Nowhere in the act or in the regulations are roomers exempted. However, a few sharp lawyers working for landlords have convinced a few judges that roomers are not tenants, but licensees. Those lawyers have created a great deal of legal confusion. Landlords are exploiting this legal uncertainty to harass and intimidate roomers, to force them to pay illegal rents and to evict them instantly on a whim.

Who are these landlords? There is Ernie Grenke, the landlord at 423 Sherbourne Street in Toronto. Grenke came on to the scene in January. The building is an 11-unit, low-rise apartment building. All the units are self-contained bachelor and one-bedroom apartments. Grenke has a licence from the city of Toronto to operate 423 Sherbourne as a rooming house and has used this to his advantage. Since January, he has demanded that the tenants pay huge rent increases, as much as \$150 a month more than their current rents. Those who refuse are told they are roomers and can be kicked out at any time.

At the last count, seven of the 11 units have been emptied and new tenants moved in at much higher rents.

1640

Grenke is continuing his campaign. About three weeks ago, Grenke was involved in an incident with one of the female tenants at 423 Sherbourne. As a result, he is facing a criminal charge of assault. Since the matter is before the courts, I cannot go into detail except to say that the incident is part and parcel of Grenke's continuing campaign to jack up rents in this building.

Ontario's Residential Rent Regulation Act says that a landlord must give 90 days' written notice of a rent increase. It says that a landlord who wants to raise the rent above the current 5.2 per cent guideline must first prove to rent review officials that the increase is justified. The rent review law applies to virtually all private rented accommodation in Ontario, including, and this is specifically stated in the act, rooming and boardinghouses.

At 423 Sherbourne, Grenke has not obeyed this law. He does not give notices, as required by law, and he seeks rent increases well in excess of the guideline.

Grenke has issued threats against two of the tenants, Marlene and Fatina Saraiva, who unfortunately cannot be here today. A week ago Sunday, after nine in the evening, Grenke barged into their apartment. He demanded a rent increase well in excess of the guideline and he did not give proper notice. The next day, which was June 1, Marlene and Fatina paid the legal rent to the superintendent as they always do.

At about 9:15 that evening, Grenke was speaking with Michael Shapcott from the Toronto Christian Resource Centre. Grenke told him that the two women were not paying enough rent. Shapcott outlined the law. Grenke was not deterred. He was not impressed. He said that he would physically force the women out on to the streets of downtown Toronto that night or the next morning. Remember, these women had already paid their June rent and Grenke had their last month's rent deposit.

Given Grenke's track record and the outstanding assault charge, the women were naturally worried. They sought the support of the Roomers' Association. For the past week, we have maintained a vigil with Marlene and Fatina, along with another group, Women United. We are in regular contact with the Metropolitan Toronto Police. Constable Danny Forsythe of 51 Division has gone so far as to issue a special alert about Grenke called an "intensive."

It is because of landlords like Grenke that roomers deserve clear legal protection under the Landlord and Tenant Act. Landlords should not be allowed to harass and intimidate roomers, force them out of their homes or force them to pay illegal rents. Sure, we have protection under the rent review laws, but what good does it do if a landlord can still kick us out?

Let me mention a second situation: 129 Winchester Street. Martina York, who is here today and four other women live in this rooming house. They keep the place clean and tidy and they have fixed up their rooms. They are good tenants. Let Martina tell you for herself exactly what has been happening there.

Ms. York: Good afternoon, everybody. My name is Martina York. I am quite nervous being here. I have not really done this before. Before I read to

you from the document before you, I just want to make sure you understand that this is a very important issue. It is highly charged with emotion for us, because to live from one day to the next without being protected is very stressful to say the least.

In February the owner, who lives in the adjoining house to where I am living right now decided to sell both properties. The owner knew us at 129 and he liked us very much. He did not want us to be kicked out, so when he signed the sales agreement last February, he insisted that the women living there were protected.

The agreement of purchase signed by the prospective owner, Alain Morin, and negotiated by Bay Street lawyer, Brian Horlick, specifically states that the new owner is to "assume tenants" at 129 Winchester. We know this because we have seen the agreement. The closing date for this original deal was May 29, 1987.

Despite the signed agreement, the lawyer, Horlick, sent a letter to the residents ordering us to leave by May 28, one day before his client was to assume title. How can a person who is not even the legal owner of a property kick out legal residents? Frankly, we do not know and we have complained to the Law Society of Upper Canada about the lawyer's actions. In any event, the deal fell through and did not close on May 29. It was to close on June 1 but then it fell through again. It is now slated to close at the end of June, which means we are still living day by day, in total uncertainty of what is going to happen with us. It is a very, very inhuman way to live.

Mr. Hogan: Why did the lawyer think he could kick out the residents of 129 Winchester? Horlick told Esther Ishimura, a community legal worker at Neighbourhood Legal Services, that the residents were roomers and had no legal rights.

Why did Horlick want the residents out even before his client took possession? The Rental Housing Protection Act, which covers most private rental places including--it states this specifically in the law--rooming houses, protects affordable rental housing by requiring a developer to get municipal permission before kicking out tenants and converting the premises to another use. However, it seems the law does not apply to vacant buildings, so developers try to empty the houses as quickly as they can, any way they can.

So roomers have legal protection under one Ontario statute, the Rental Housing Protection Act, but if they claim that protection they risk being kicked out because they lack security of tenure under the Landlord and Tenant Act.

There have been in recent months literally dozens of rooming houses throughout Toronto and Parkdale where roomers have been under attack. Attached to this brief is a statement from the Roomers' Association that gives details on this housing crisis.

I would like to end with one other situation, 433 Ontario Street. There are six people living in this rooming house. A speculator named Kalezic bought this property for approximately \$170,000 in late winter. He almost immediately flipped the property, selling it at the end of April for \$225,000. He offered the prospective owners vacant possession. In other words, he agreed to kick out the residents of 433 Ontario Street. He stood to gain a \$55,000 profit in

just a few short weeks and all he had to do was kick six people out of their homes and onto the streets.

The streets and hostels are where many roomers end up when they are forcibly removed from their homes. The rental vacancy rate in Toronto is, for all practical purposes, zero. There simply are no affordable places left for people who are working at low-income jobs or those on social assistance. As speculators drive out roomers to make quick profits, as landlords illegally hike rents, more and more people end up on the streets.

The three cases I have mentioned today are not isolated examples. Dale Bairstow, chairman of the Ontario government's year-long Task Force on Roomers, Boarders and Lodgers, reported in December that as many as 26 rooms a day--that is 26 rooms every day--are being lost. The government is announcing initiatives to provide new affordable housing but the government must also protect the existing stock. To state it simply, no one can build places fast enough to replace the disappearing stock. The Legislature must act quickly to protect existing housing by giving roomers the legal tools to fight to save their homes.

Finally, let me refer you to the last page of our May 13 statement. It lists some of the many studies that have recommended that roomers be protected under the Landlord and Tenant Act. On May 1, 1987, the Roomers' Association executive met with the Attorney General (Mr. Scott) and he repeated a promise he made to roomers in December 1985, a promise to amend the Landlord and Tenant Act to include roomers. In his latest newsletter to his constituents he repeats this promise. Representatives of all three political parties are on record as supporting this basic protection. Members of this committee have an important opportunity to follow through on these promises by approving Bill 10 without delay and sending it back to the Legislature for final reading and proclamation.

Roomers in Ontario are tired of being treated like second-class citizens. We are fed up with being assaulted, with being forced to pay illegal rent increases and with being evicted for any reason or for no reason at all. We are angry and we are taking action to stop the loss of affordable housing. But we need legal tools, the same legal protections given to all other tenants in Ontario, to carry on our campaign. We are here today to urge this committee to act immediately to ensure we get those legal tools.

Thank you. I am prepared to answer your questions.

1650

Mr. D. R. Cooke: This is a very good presentation, very well done, and it drives the point home. I take it from what you are saying that the Landlord and Tenant Act and its supplementary legislation is, in your view, good legislation for tenants; in other words, you would like to be included in that act.

Mr. Hogan: Right.

Mr. D. R. Cooke: Is there anything about that act that you would like to see changed if you were to be included in it?

Mr. Hogan: That is a little bit difficult--I am not a lawyer--and actually I would like to refer that question, if I may, to the next deputation, which is from a group I belong to, the Coalition for the

Protection of Roomers, Boarders and Lodgers, but I will say this. The reason I want protection for roomers under the Landlord and Tenant Act is because the Landlord and Tenant Act and the Rental Housing Protection Act supposedly create an interlocking mesh of protection for affordable housing that is already built and being lived in. Until roomers are included with complete rights as tenants, forcing landlords to have a legitimate reason to evict them, it is far too simple for a landlord to gain possession of a vacant building and thereby drive a bulldozer or maybe a yuppie's Mercedes through that supposedly interlocking mesh of protection.

Mr. D. R. Cooke: Your complaints, and they are all very legitimate ones, are against professional landlords obviously. Would you have any objection to small landlords, who might rent one or two rooms in their private homes and live in the homes, being exempted from legislation?

Mr. Hogan: Normally that type of landlord is the most stable form of tenancy anyway and tends to last much longer than the professional landlord, as you call him. Under certain circumstances, I could easily live with that--on the basis of two roomers, for instance, in a home where the owner actually lives. That seems to be a reasonable request. However, I would caution against going much further than that for the simple reason that any more than two roomers becomes pretty well a business. As well, the Landlord and Tenant Act as it stands provides numerous protections to the landlord as well as to the tenant. It is plainly stated and covers the spectrum of any reason a landlord would normally want to evict a tenant.

Mr. D. R. Cooke: But you can see the problem that might sometimes occur. If a room is rented in one's own home and there is a 90-day notice provision, those 90 days could be very tense for everyone concerned, as opposed to the professional situation where the landlord is not living in the home.

Mr. Hogan: I recognize that. That is why I say on the basis of two or fewer rooms, I could probably live with it.

Mr. Jackson: Just to follow up on that, I might advise Mr. Cooke that I tabled Bill 59 in the Legislature. Perhaps the clerk will get copies of that for the committee, but it does refer to the point you have raised and it specifically mentions four units or fewer. John, I appreciate the fact that you have reacted to the number as well as to the exemption, so you have addressed both the issues through Mr. Cooke's question. But I did want Mr. Cooke to know that I did table that bill in the House and that it would form one of the amendments I would be tabling with respect to Bill 10.

John, if I may direct a question to you, do you in any way see the supply of housing being adversely affected by Mr. Reville's bill or by any amendments that have been mentioned so far?

Mr. Hogan: No, not in the least. It has always been the roomers' position that the supply of housing and protection of roomers are two well-separated, completely different issues. The very fact that Bairstow's report turned up a number of up to 26 units a day of affordable rooming-house stock disappearing now, without protection of any sort, leads me to believe that any protection whatsoever is not going to--it cannot be accelerated. The market pressure is doing this right now. As a matter of fact, protection would have the opposite effect. It would preserve the supply of rooming-house stock that is now available, by the simple means of providing the tenants--the people living in it--with continued access to their homes. By denying

developers and speculators the ease of achieving vacant possession by protecting the person, you are also protecting the room. You are keeping a living space. Even if the individual does not want to live there, someone else can move in when he moves out.

With respect to the other issue of numbers--I do not want numbers to become an issue. I want the issue to be how fast we can give roomers protection. I will not quibble or argue numbers--

Mr. Jackson: No.

Mr. Hogan: --especially if it is going to stretch this out by a day.

Mr. Jackson: I was not inviting a debate on the numbers. I thank you for clarifying your position on that. It gives me a reaction to the figure which I took directly from Bairstow's report, when I did my amendment. If you are on record with that, it is fine.

My second question, John, has to do with an interpretation that Bill 10, when applied, virtually gives all other tenancy situations status within the Landlord and Tenant Act. Do you interpret it in a way that you could broadly interpret roomers and boarders to include a rather large range of tenancy arrangements?

I will give an example. Is a roomer or boarder someone who takes seasonal accommodation at a hostel in downtown Toronto? Do you feel it is limited to some definition of roomer and boarder to include a rooming house and any one in it? I understand roomer or boarder to be someone who is not transient; however, this is his form of housing. It is not a transient-type of accommodation. Could you react to this for me? Do you feel it is more inclusive of more categories of tenancies, or is it--?

Mr. Hogan: Well, especially in the one case of the hostel, for instance, it is obviously a transient-form of accommodation. A person is in the hostel in the first place because he cannot find a permanent home to live in, so it is a temporary arrangement. It is not a tenancy arrangement, as such.

Now, in other areas, I will have to--I would not like to, again, squirm out of the question, for the simple reason that our next brief by the Coalition for the Protection of Roomers and Boarders deals specifically with many of these legalistic definitions and questions.

Mr. Jackson: Okay. Then my final question is: Do you feel it would be helpful to the bill if we had a definition of what a roomer and boarder is? Do you anticipate we might get a clearer response from the next deputant?

Mr. Hogan: Right. I do.

Mr. Jackson: Okay. Thank you very much.

Mr. Reville: Thank you for your deputation. I want to congratulate you on the work you have been doing recently to raise this issue. You have done a good job on it.

You point out that the Rental Housing Protection Act does not really work for you because you do not have the Landlord and Tenant Act protection. In the case you describe on 423 Sherbourne Street, it looks as if you cannot make the Residential Rent Regulation Act work, either. As I read the

description, the landlord is raising those rents illegally. He should not be allowed to do this under Bill 51. However, because there is nothing a roomer can say, either he pays or he goes. Is this a problem you encounter often?

Mr. Hogan: This is correct. It is exactly the situation at Sherbourne Street. The landlord first requested from the two ladies named in the brief a 50 per cent rent increase. When they told him flat out they had some rights to notice, and had some rights to refuse to pay the rent increase, he told them, "You either pay, or you get out."

As we mentioned, there are only three remaining at this moment. There are only three remaining tenants in any of those units who were there previous to this landlord buying the building. He has flipped over all the other rooms. He has raised the rents--in some cases doubled the rents--simply by forcing out a tenant, and then charging the new, doubled rent to the new one who moves in.

This is the other half of our supposed interlocking protection; the three bills--Bill 51, the Rental Housing Protection Act, and the Landlord and Tenant Act. However, the Landlord and Tenant Act is where we are driving the bulldozer through, right now. The protection is not clearly there.

1700

Mr. Reville: Mr. Jackson talked to you about the recommendations of the Bairstow report. I am sure you are aware there was an advisory committee set up to comment on the Bairstow report. It made quite different recommendations from the Bairstow report; in fact, took a different point of view from that of Mr. Bairstow about the roomers that lived with Mrs. Murphy in her house.

The advisory committee recommends that those roomers be protected under the act, but there be somewhat different arrangements for evicting them. Have you had a look at that, or should I really be addressing that to the coalition?

Mr. Hogan: I have seen it and I will comment on it.

I have seen the reports. I prefer their approach, having a slightly adjusted form of notice for eviction, especially considering most of Ontario is small towns, and rural. In the smaller cities it is not quite the same as in Toronto, where we have huge rooming houses and landlords owning literally thousands of rooms.

In the smaller towns it is mainly comprised of small, one-home landlords renting out two or three rooms. In this case, we would have whole sections of the province still totally unprotected by the Landlord and Tenant Act if we followed Mr. Jackson's approach. I prefer the approach of the advisory committee. I will leave it at that, because we have a group following us.

Mr. Reville: I know you have met with the Attorney General, and you have tried to meet with him on other occasions. I read his last newsletter, also. He said he had done something to protect roomers: Can you tell us what it was?

Mr. Hogan: Without being facetious, I do not have a clue.

Mr. Reville: I think you could be facetious.

Mr. Hogan: He promised a form of protection in upcoming legislation which, to my way of thinking, is exactly that--a promise with no paper to back it up. I have not seen the words. I have not read the words.

Mr. Reville: Thank you.

The Vice-Chairman: I have no further questioners. Mr. Hogan and Ms. York, I would like to thank you both for coming before us. We turn now to our next deputation.

Mr. Hogan: Thank you for having us here.

Mr. D. S. Cooke: I have a point of order.

The Vice-Chairman: Mr. Cooke?

Mr. D. S. Cooke: The legislation is not legislation which would normally come under the purview of the Attorney General. I have not seen the document you are talking about, but I rather imagine he has indicated his own desire to see this legislation. He does not have the power to bring forward anything. I think this should be made clear.

The Vice-Chairman: I am not entirely certain what the point of order is, but the Landlord and Tenant Act is administered under the aegis of the Attorney General. Thank you, Mr. Cooke.

We will turn now to the Coalition for the Protection of Roomers and Boarders. Ms. Mahoney?

I remind committee members we do have before us a copy of the brief from the coalition. It is exhibit 2.

COALITION FOR THE PROTECTION OF ROOMERS AND BOARDERS

Ms. Mahoney: I will not recite all the member organizations of our coalition. They are listed on page 1 of the brief. Suffice it to say, several legal clinics, roomers' organizations, and Toronto agencies serving roomers have belonged to this organization over the past two years.

During this period we have lobbied the Ontario government to extend coverage of the Landlord and Tenant Act to cover roomers, boarders and lodgers. Therefore, we are naturally delighted that Bill 10 proposes to do exactly this.

We thought we would try to take a different tack from that taken by the roomers. They talked about the actual situations they have experienced, particularly in downtown Toronto.

We thought what we would do, first of all, is to run through some of the legal quagmires that roomers face. Some of you probably have very little knowledge of the Landlord and Tenant Act; why it does not apply to roomers and why it should. We thought we would spend the first part of the brief giving you a legal background on that in as lay terms as we possibly could. I have also taken note of the questions that John Hogan referred to. I will be happy to answer those and any others at the end of the presentation.

The Landlord and Tenant Act provides security of tenure for Ontario tenants. Security of tenure has basically two aspects. It protects tenants

against instant eviction. A landlord who wants an eviction must first give notice, stating his or her reason, and then apply to the court for a writ of possession. The tenant has the right, if he or she so chooses, to challenge this reason in court before the eviction can be ordered. That is an essential change from the experience John was talking about earlier.

In addition, security of tenure protects tenants against arbitrary eviction. Not only do you have to go through due process, but you have to have a reason. While a landlord can certainly evict a tenant who refuses to pay rent, creates disturbances or carries on illegal activities, she or he cannot simply evict because of a dislike of the tenant or because the tenant complains too much about repairs. In Ontario, the government has decided that shelter is a basic need, and the remedial legislation of the Landlord and Tenant Act ensures that no tenant can be deprived of shelter without a good reason and due process of law. Nothing too radical there.

Now, why are roomers not protected by the Landlord and Tenant Act? This is where we go into the obscurity of common law. Vague wording in the Landlord and Tenant Act has plagued thousands of Ontario roomers who are seeking security of tenure. At present, their status is quite unclear. They are not specifically mentioned in the Landlord and Tenant Act, but they are also not explicitly excluded. The definition of a tenant in the Landlord and Tenact Act includes "a lessee, occupant, subtenant, undertenant and his and their assigned and legal representatives."

Our coalition believes that the Ontario Legislature, when defining tenant thusly, intended this broad definition to apply to roomers and boarders. The problem is that many judges have ruled that roomers and boarders are not tenants and, therefore, are not protected by the act.

Since the act does not explicitly deem roomers to be tenants, each judge, in a case brought to court by a roomer, must determine whether the relationship between the rooming house operator and the roomer constitutes a landlord and tenant relationship or a licensor/licensee relationship. To do this, the judge refers to a number of tests derived from century-old British common law. In some cases, judges have found roomers to be tenants and, therefore, entitled to the due process under the law that we talked about in the first section. In other cases, judges have ruled that roomers are only licensees, occupying their premises "at the pleasure of the landlord." Without going to court, a roomer does not know whether he has any rights at all.

You may find this a confusing state of affairs, and we do. Like other tenants, roomers exchange money for shelter. The only difference is that other tenants have self-contained units and roomers rent shared accommodation. Yet, all other tenants are subject to a very clear set of rules, regulations and responsibilities while roomers are not.

Now your Legislature in 1979 attempted to rectify this situation by passing the Residential Tenancies Act, which was intended to replace the Landlord and Tenant Act. This explicitly included roomers by reference. However, much of this act was declared unconstitutional by the courts for unrelated reasons to the roomers' and boarders' issue. They regarded it as taking away the powers of the federal courts and replacing them with provincially appointed tribunals. Thus, the Landlord and Tenant Act still governs basic landlord and tenant relations in Ontario. Because of the omission of the words "roomers, boarders and lodgers" in the Landlord and Tenant Act or from the act, the status of roomers is determined by a principle of ancient common law dating back to the times when debtors' prisons were

common and children were working in coal mines.

1710

So that is the current situation. Now we are going to give you three reasons why roomers should be protected by the Landlord and Tenant Act. I think you heard some very cogent reasons expressed earlier by John. Some of these touch on the same issues, but in broad principles not by specific examples.

Roomers are tenants. That is our first premise. They just have slightly different living arrangements. As the advisory committee to the minister on roomers, boarders and lodgers stated:

"Roomers and boarders have been denied these protections through a quirk of legal history. It is ironic that the fundamental reform in Ontario's residential tenancy law, which overrode centuries of common law, left [roomers] behind because they were not defined as tenants by that same centuries-old common law."

Now the second reason we think roomers should be covered: Maintaining a legal distinction between roomers and other tenants results in legislative discrimination against the poor.

The majority of roomers are low-income, single people. Many are on old-age pensions or disability pensions. As a group, they earn substantially less than any other type of renter. The primary reason people become roomers and boarders is because they cannot afford to rent more private accommodation. Therefore, to refuse legislative protection to roomers and boarders is to institute discrimination on economic grounds. If a recent District Court decision of Newfoundland is upheld, it may be, by analogy, that Ontario's failure to treat roomers the same as other tenants offends our Charter of Rights. I am going to tell you a little bit about this Newfoundland decision because I think it is directly relevant to the Ontario situation.

Newfoundland has a Landlord and Tenant Act. Under that act, their subsidized-housing tenants are not able to have all of the rights afforded to the other tenants under the act; a very similar situation. Those rights include the right to equal notice of termination, which is one of the rights that John mentioned with respect to all three examples. Also, they do not have the right to have their premises kept in good repair.

Now, a woman decided to take the government to court in order to obtain these rights. The District Court judge ruled that the Landlord and Tenant Act in Newfoundland was discriminatory under section 15 of the Charter. In his decision, Judge Riche called these rights "basic needs...which should be expected by all tenants of residential housing." In his conclusion he said, "I am satisfied that to deny such rights to these tenants because of their economic circumstances would be to impose an indignity not acceptable in our society."

Through omission, the Ontario Legislature has imposed a similar indignity on roomers and boarders. Through its failure to act, our government has said, "If you are too poor to buy a house or rent an apartment, then you do not deserve any tenant protection at all." That is what the omission is saying.

This not only offends the Charter, it offends common decency. It implies

that protection under the law should be directly proportionate to the wealth of the individual. But that is not a principle that I think the Legislature of Ontario wishes to uphold. Separate legislation to protect roomers--in other words, let them have their own legislation--runs into similar problems. It is discriminatory again because it creates a distinction between roomers and tenants based on economic grounds, not grounds of necessity. If roomers are paying rent in exchange for shelter, then they deserve to be subject to the same rules and protections as all other tenants. That is fairness.

The third reason: Because roomers do not have security of tenure, in practice they cannot exercise the rights guaranteed to them by other statutes. Mr. Reville brought out this point with John on a couple of the examples.

Roomers are specifically included under the Residential Rent Regulation Act, the triple-RA as we like to call it, the Rental Housing Protection Act and municipal health and building bylaws. But roomers who assert their rights under these laws risk eviction because of their uncertain status under the Landlord and Tenant Act. The intention of our government to protect affordability and supply of existing rooming houses is thwarted as long as roomers lack the legislative protection necessary to enforce these rights.

Now I do not know if there are any Liberals left in the room--

Interjection.

Ms. Mahoney: One. I see one Liberal here. I would think that the Liberals would be extremely concerned that the legislation they have spent so much time passing over the past year it is being thwarted by the omission of the current government to protect roomers and, therefore, the rooming house stock and affordability.

The result is threefold: One, rooming house operators can and do break the law with impunity. Two, our affordable rooming house stock is deteriorating and, in some cases, disappearing entirely. Three, roomers are condemned to live in the worst of conditions, under constant threat of eviction and without adequate legal recourse when subjected to physical abuse, theft of belongings and illegal rent increases.

Clearly, the principles of natural justice require you to act immediately, to rectify this situation by passing Bill 10 into law.

I will not read this out, but page 6 has a list of reports. It is not an all-inclusive list. I found there were a couple of reports I forgot to put on. These are reports that have all supported the position we are taking here today. Quite sadly, I will point out that the last five are coroners' verdicts. People have been dying from homelessness as a result of lack of protection under the Landlord and Tenant Act.

Since 1974, reports, coroners' verdicts, mayors' committees, government-sponsored committees, municipal committees and public health inquiries have all been calling for inclusion of roomers under the Landlord and Tenant Act. What we are saying in this section is that there is support for this position.

As we explained earlier, the Legislature intended equal treatment for roomers in the Landlord and Tenant Act. It is the courts who have been the spoilers in this situation, not the Legislature. The Legislature has also explicitly written roomers into all subsequent legislation affecting tenants. It has not been a controversial topic in other legislation.

We also append letters indicating political support for this from members of the Legislature: the member for Oakville (Mr. O'Connor), who is a member of this committee but not here today; the member for Sudbury (Mr. Gordon), the Housing critic prior to the member for Burlington South (Mr. Jackson); and the member for St. Andrew-St. Patrick (Mr. Grossman), leader of the Conservative Party.

We also append a copy of the response to a survey by the Attorney General (Mr. Scott), in which he indicates unambiguous support for the protection of roomers and lodging house tenants under part IV of the Landlord and Tenant Act. The time has come for all the political parties to make good their promises and pass Bill 10.

I will deal very quickly in the next minute or two with some of the commonly raised objections. One of the problems with being the first and the second deputants at public hearings is that you do not get to hear people who might have objections and you do not get to answer those people in rebuttal. So we are trying to anticipate what might come up.

The first commonly heard objection is that if you extend the act you are going to drive rooming house operators out of business. In fact, I think the Attorney General at one time held this position. I hope that our subsequent public education has disavowed him of this notion. This is the same threat that apartment house landlords used when tenant protection was first introduced. The Landlord and Tenant Act establishes clear and reasonable rules for both landlords and tenants. Anybody who is scrupulous is not going to be driven out of business by inclusion and regulation under the Landlord and Tenant Act.

The second objection is that rooming house operators will just close down their operations rather than submit to the act. Then what will happen to the roomers who will be left out in the cold? I think John Hogan answered that very clearly; this is what is happening now without the protection. They are being left out in the cold; they are being kicked out of their homes. So the reverse is true. Coverage under the Landlord and Tenant Act would help roomers to keep their homes.

The third objection we often hear is that the act is going to protect roomers who are disturbing their neighbours or damaging property. The answer to that is very simple. The Landlord and Tenant Act provides landlords with clear remedies in such cases. If they work in apartment houses, they will work in rooming houses.

1720

The fourth objection is that it takes too long to evict a tenant. That one we hear all the time, let me tell you, from landlords of apartment houses and landlords who rent out whole houses to families. The fact that they want to evict people quickly is a common complaint of landlords. That does not mean the process does not work; it just means some landlords feel it is not fast enough. The problem is that past abuses by landlords make this protection necessary. Due process does take time.

In a case where a rooming house tenant is extremely disruptive or dangerous, the landlord should call the police to deal with the immediate situation. That is obviously a matter of public safety, a matter of the safety of the other tenants on the property. The police can deal with that situation, and the eviction process will take its due course. Do not wait for the courts in that situation; call the police.

It is unreasonable to deny due process of law to thousands of roomers and boarders just because of the potential actions of a few. Roomers are tired of being held ransom to these mythical examples that are brought up time and time again. We have heard about dozens and dozens of people who are losing their homes because they do not have the basic protection that other tenants have. Sure, nothing is perfect in this world, but you have to give them a set of rules to live by before you can expect them to obey a set of rules.

The fifth objection is that organizations that provide accommodation to ex-psychiatric patients should be exempt from the act. Group homes are already exempt, but I think that was a question that was raised earlier.

The coalition believes that private landlords and organizations that rent to ex-patients but that do not provide structured therapeutic care should receive no special exemption. To put it simply, ex-psychiatric patients returning to the community should have the same rights and responsibilities as other citizens; otherwise we get into another charter argument. We cannot say, "Because you are an ex-psychiatric patient, you do not have rights under Ontario law." No distinction exists in law currently between ex-psychiatric tenants in apartment houses and other tenants in apartment houses, and that works out fine. Let us not put that into the act. Let us not build discrimination into Ontario law.

There is an answer to the concerns that some landlords have, that is, let the Ministry of Health and the Ministry of Community and Social Services provide the appropriate support services that are necessary for landlords who want to cater to ex-psychiatric patients. There is a need for it. The programs are in the fledgling stage. They need more money. Let us provide that as an incentive and let us provide more support services for the tenants. But do not try to achieve that objective by suspending the rights of rooming house tenants just because of their past medical history.

Our final objection is that while we agree with protecting roomers, we feel that more than a simple amendment is necessary. This will take time, which is exactly what we do not have. Roomers are running out of time. Their homes are threatened by real estate speculators and they endure physical and sexual abuse, illegal rent increases and substandard living accommodations, all because they lack tenant protection.

We have a word for the current government, which perhaps Mr. Poirier could take back. The current government has studied the situation long enough. It set up the Bairstow task force in February 1986, and his recommendations on security of tenure were made in private to the minister in December 1986. The advisory committee made its recommendations in private to the minister by January 12, 1987.

January, February, March, April, May, June. Okay, that is five months, and we have not seen any draft legislation from Mr. Scott. We have not heard of any concrete promises from Mr. Curling. We do not know why, because both of them are claiming they are doing all they can for roomers. They have not done anything that we can see, that we can take back and wave in the face of the courts when we are faced with illegal evictions.

Also, as long ago as 1985, the Attorney General promised roomers that legislation would be passed. The promise, at that time, was that he would pass it by the fall of 1986. This is the spring of 1987 and we are still waiting. Further study is unnecessary and further delay is unconscionable. It is time for the government to keep its word. We call on the government to support Bill

10. Do not introduce separate legislation. Support Bill 10 and ensure its immediate passage into law.

The Vice-Chairman: Thank you very much, Ms. Mahoney. Mr. Reville.

Mr. Reville: Ms. Mahoney, thank you for your brief. Congratulations on your work. You have read the Bairstow report and probably have had somebody leak you a copy of the advisory committee report. Could you tell us which approach you prefer?

Ms. Mahoney: Naturally, the approach we prefer is the approach in our brief, which is the simple inclusion of roomers and boarders under the act.

Mr. Reville: Right.

Ms. Mahoney: Is there a specific section you would like me to talk about?

Mr. Reville: Yes. I guess the question that will vex most of the members of the Legislature, perhaps those who represent smaller communities where there are not many large rooming houses, deals with the situation where there is perhaps an older woman who rents a couple of rooms, maybe three or four rooms, and she is nervous or apprehensive about having, say, a roomer who is violent. The point that Mr. Jackson will make to you is that in those situations we may cut off our nose to spite our face. Mrs. Murphy will go out of the rooming house business. Maybe she will sell her house or make it into a condominium. I do not know what she will do.

The advisory committee takes the approach that, in a case where an owner occupies the house in which there are fewer than three rooms, the Landlord and Tenant Act applies to the roomers, but a roomer might be evicted without cause as long as there are no shenanigans surrounding the eviction and as long as proper notice is given. I believe this is basically what the advisory committee is saying, which is a different approach than Bairstow took.

Ms. Mahoney: We hate to be contrary, but we take one that is in between the two. We have no problem with Mrs. Murphy renting out to one or two tenants--that is where our line is from that of the advisory committee--and perhaps being exempt from the act--which is from Bairstow--exempt as opposed to subject to some conditions, provided that Mrs. Murphy is sharing facilities with the tenants.

If she rents out one room upstairs and one room downstairs, and they all share the kitchen and bathroom, then we have no real problem with that exemption. When I went to university, I was a roomer under those circumstances. Quite frankly, in most circumstances like that, the Landlord and Tenant Act is not necessary because there is no abuse on either side. But if Mrs. Murphy has two floors that are self-contained in her house, with her own entrance, bathroom and kitchen, while the basement is divided into two or three rooms with a bathroom and kitchen, which the two roomers share in common, then we think those people should have the protection of the Landlord and Tenant Act.

This follows along the philosophy of the Ontario Human Rights Code where if you share facilities and accommodation with people, perhaps you should have a few more rights, as a property owner, than if you have separate accommodation facilities. That is the distinction we would one.

Mr. Reville: I want to nail this down right tight, because it is very helpful for you to give us your view on this.

"Owner-occupied": owner shares facilities with the roomers. How many rooms?

Ms. Mahoney: One or two rooms.

Mr. Reville: Less than three.

Ms. Mahoney: We think they could be exempt from the act. We are not advocating that, but it is a position we could live with.

Mr. Reville: Okay. So that would be sort of a fallback.

Ms. Mahoney: Yes, but if the owner does not share the bathroom and the kitchen, if the roomers have separate facilities, we think it is the same as if you had two roomers in an self-contained apartment.

Mr. Reville: Fair enough.

Ms. Mahoney: Therefore, they should be considered tenants and probably are under common law anyway.

Mr. Reville: Let me ask you a tough political question.

Ms. Mahoney: Oh, oh.

Mr. Reville: Actually, it is tough, Mr. Poirier.

Homes First, which is often much touted as an answer to the problem of affordable housing, is located at the corner of Jarvis and Shuter. For the benefit of committee members who do not know, it is an 11-storey, high-rise rooming house with 77 rooms. People live in units of five and four; regrettably, they are not tenants. They are licensees. Do you have a view on this? Is that right or wrong, in your view?

1730

Ms. Mahoney: Well--

Mr. Reville: I will give you a hint of what it is in my view.

Mr. Jackson: Why does she need a hint?

Ms. Mahoney: I talked to the head of Homes First on Friday afternoon. I am aware that Homes First will be supporting Bill 10, which is nice.

Mr. Reville: That is good news.

Ms. Mahoney: Yes, good news for us. Good news for them, too. It is the right decision.

If Homes First--and this is how you evade a question, Mr. Reville--

Mr. Reville: I will pay careful attention.

Ms. Mahoney: --were to come forward to this committee and say, "We feel we should be exempt from the Landlord and Tenant Act," our primary concern would be: Will the fact that Homes First has asked for an exemption

delay passage of Bill 10? Our concern is that something happen immediately to protect roomers.

It may well be that members of this committee may hear any number of people from the supportive housing sector. It may be that members of this committee will decide our position is too extreme and some supportive housing should be exempted from the act. Our chief concern will be that you come up with a solution fast, that you do not say, "Wait a moment, maybe we should extend public hearings." I hear you have just done that with the paralegal bill. I hope you have got it out of your systems, because we do not want you to extend the public hearings on this.

We want you to hear the deputants who have been granted permission to come and speak, who represent all the major organizations, and then we want you to get on with it. Get your pens out. If you want to write a legislative amendment to Mr. Reville's bill, do it quickly. Agree on it in good faith and goodwill. Bring it back to the House before the end of June so we can get this bill passed.

I have evaded the question. I have not answered it because our chief concern is not who is in, who is out. Our chief concern--

Mr. Reville: Basically, you are telling us, "Do not get tangled up in all these exemptions and delay protection for the roomers who are being evicted now."

Ms. Mahoney: That is right. I will even give you a mechanism by which you can do it quickly, which is fair to everybody and guarantees everybody the right to a hearing. The way to do it is not to write them all into the act. Otherwise, you would be saying, "We have Homes First, but what about Ecuhome? What is Ecuhome?" You would be drawing up a list that would be haphazard. The way to do it is to say, "This act exempts certain institutions which shall be determined by regulation."

The modern way to draft legislation is to use regulations whenever possible. It means that you people do not have to go through and make these tough decisions in a very short time framework. I am not suggesting you do this, but if, after all the hearings, you decide you want to exempt some organizations, then that is the way to do it.

Then you can approach all the organizations, like the Supportive Housing Coalition, and people who are not members of them but who might conceivably have an argument for exemption. You can hear their arguments and you can carefully draft a regulation that protects their rights and protects the rights of the tenants.

Mr. Reville: That is very helpful. Thank you very much.

Mr. Jackson: Ms. Mahoney, on behalf of both official opposition parties within the Legislature, we have our own strong views about leaving to the government the process of laying down regulations and abdicating our responsibility, especially from a government which, by your own admission, you feel may not have been as forthright in responding to your concerns in the first instance. I did not want to let your positive suggestion go without comment, especially since Mr. Reville kindly allowed me to respond.

I have a series of questions and appreciate the very clear and concise manner in which you have set out your brief. I am fascinated by the

Newfoundland case. Did you know whether it is under appeal?

Ms. Mahoney: When I got a copy of that case, the crown was talking about hearing the case and a decision had not been made. I can easily find out for you, but not today, unfortunately. I would be happy to communicate that to your office. If it is under appeal, no decision has yet been rendered on it.

Mr. Jackson: I would be interested. It is not that it would deter the committee's work in any way, but I would like to have a look at the case because I noticed--you were so complete in your brief--you indicated that it was the province and the Newfoundland and Labrador Housing Corp. As you know, in his report, Bairstow includes a similar type of corporation as an exemption. If it is a charter test, I would be really interested in looking at it because it may be one of the exemptions this committee deals with, very briefly, next week. So if you have a copy--

Ms. Mahoney: Would you like a copy of the decision?

Mr. Jackson: If you could give that to the clerk, the clerk would be more than pleased to circulate it to all members of the committee. I am sure even legislative research could be empowered to spend the necessary quarter to make a phone call to Newfoundland to determine the status of that, whether it is under appeal or not. That would be appreciated very much.

I appreciate your comments about reacting fast to the bill. That is not a problem as you know from the comments I have made on behalf of the official opposition. However, I have taken the necessary time, as has my colleague the housing critic for the New Democratic Party, to read the Bairstow report. I daresay, like yourself, I have been able to pick up some of the threads that exist in the advisory committee report. Both those reports do not limit themselves entirely to the issue of a blanket inclusion of roomers and boarders within the Landlord and Tenant Act. It does go on to address several issues. When Mr. Reville asked you the question, "Which approach do you prefer, Bairstow or advisory committee?" I thought he was asking you beyond my amendment in Bill 59. I thought he was talking more in general terms about other recommendations within those two reports.

The reason I want to explore this area with you is that now the committee is empowered to open up the Landlord and Tenant Act and to deal with the impact it will have on roomers and boarders, it is our opportunity, during the course of four or five days of activities, to deal with several issues addressed in both those reports. I do not need to give you a lesson on the politics of government to let you know that in spite of all our work in those four or five days, the ball still rests with the Minister of Housing (Mr. Curling) and his House leader, Mr. Nixon, to determine whether he is going to bring that bill forward at all.

It strikes me that if you have indicated that you want everything speeded up and if the government is going to use this argument that it has other amendments and want it dealt with in more detail, then it strikes me we should possibly look at one or two of those items briefly so that we eliminate the argument from the Minister of Housing that, "All you dealt with was one little element of two reports; therefore I cannot bring it forward until we do this process all over again." That may occur after a provincial election.

Excuse me for such a long preamble, but do you get the context--

Ms. Mahoney: I get your context.

Mr. Jackson: --in which I am suggesting that by shortening the hearing by one day, we may play directly into the hands of the Minister of Housing, who might say: "With all the work that was done, you did not do it justice. All you did was focus in on one point." The object of the exercise is to get the amendment through and to get it passed as law so the protection is in place.

Having said all this, are there elements of the Bairstow report or the advisory committee report, beyond the specific Reville amendment--if I can call it that--Bill 10 that you feel should be addressed or considered as part of protection for roomers and boarders?

1740

Ms. Mahoney: We had quite a discussion about this in our coalition meeting, concentrating not only on Bairstow but also the advisory committee. One of the things we liked about Bairstow's approach was that he wanted to do, first, exactly what Mr. Reville's bill proposes, which is just give protection to roomers. Then he suggested that if there were other concerns with the Landlord and Tenant Act, they could be looked at at a subsequent time. He divided the tasks up differently to assure a speedy passage. He was hoping it could be passed, I believe, by April 1987. He was prepared to have the blanket endorsement. Then he made some other recommendations, some of which we agree or disagree with, that he felt could be dealt with within a broader framework of looking at the Landlord and Tenant Act. We like his approach.

I am not going to discuss with you many of the specific proposals that he comes forward with: first, because I do not have my report here and I wrote it in February; second, because the hour is getting late and I am sure you want to hear the other deputants; but third, because we did make a decision as a group. Are there any glaringly obvious flaws with passing Mr. Reville's bill right now that are going to backfire on roomers and boarders? That is a question we asked ourselves. We looked at the act and decided no. Although it may not be the perfect protection in all instances--no act is--it would provide the basic toehold of legality that they require.

We made the decision that speed was the essence, that we would be happy if the bill were passed as is and that future discussion of the Landlord and Tenant Act could always take place within a different framework where the time pressures were not as great and we could look at the act more fairly.

With respect to the advisory committee report, many minor housekeeping changes were proposed. Some were good and some were more perfunctory than anything else; adding the word "week," so you could have a week's deposit instead of a month's deposit, minor changes such as that. Some of them were fairly profound changes that would affect other tenants: for example, in cases of a weekly tenancy, reducing the notice period, etc. Right now, a weekly tenant who lives in an apartment house has the same notice period as monthly tenants in most cases.

The advisory committee made some proposals to change that, that we had trouble understanding. We think those are deserving of more study but that study should not preclude passage of Bill 10 now. We see it as being a two-tiered question.

The Vice-Chairman: Thank you very much. Mr. Jackson, we are at time.

Mr. Jackson: We are at whist

The Vice-Chairman: We are at time. Do you have one more question?

Mr. Jackson: I would like to request the deputant to come back then. I have a series of questions. I was not notified that we would close at twenty minutes to six. I am sorry.

The Vice-Chairman: With apologies, there was an indication of about half an hour. We have gone over. I do not wish to shorten questions unduly, but on the other hand I am a bit concerned about the direction the committee would like to go.

Ms. Mahoney: We might be able to assist the committee. Since we were on before many of the other deputants, we were going to ask if there might be a possibility--first of all, we did not know if the hearings were being extended beyond the 12 deputants who are listed to speak. That was a question of clarificaton we sought from the chair. Do you have a time limit or are you only hearing some deputants?

The Vice-Chairman: Excuse me just a moment. My understanding is that the committee has not dealt with that question.

Ms. Mahoney: We were going to request that you not extend the hearings, but if you do extend the hearings we would like a chance to come back near the end of the hearing process.

Mr. Reville: May I speak to this matter?

The Vice-Chairman: I am sorry, if you would just give me a moment, Mr. Reville, I am getting advice from the clerk on the matter.

If you will permit me in order to simplify this, there is evidently quite a waiting list of people who have already requested to appear if there is any extension. Therefore, if the committee is agreeable and if, Ms. Mahoney, you are able, would the committee wish to continue with questioning for a few more minutes now rather than engage in a lengthy discussion on procedure?

I must reserve a moment. I have been given warning of a procedural motion to be put this afternoon by Mr. Charlton, but short of that one piece of routine proceeding, we could continue if it is the committee's wish.

Mr. Reville: On a point of order, Madam Chairman: Could I just say to anybody who wants to listen that I am doing another bill in another room, so I am going to excuse myself now. Thank you for your presentation.

The Vice-Chairman: Thank you. My apologies for any confusion on the matter. Mr. Jackson, perhaps you will just leave us a couple of minutes for procedural matters.

Mr. Jackson: May I proceed?

The Vice-Chairman: Please.

Mr. Jackson: Ms. Mahoney, on page 8, you make reference to clearing

up objections: "Where a tenant is extremely disruptive or dangerous, the landlord should call the police to deal with the immediate situation. It would be unreasonable to deny due process of law to thousands because of the potential actions of a few."

I might agree with you on that point. However, did not the Bairstow report or the Advisory Committee on Roomers, Boarders and Lodgers make some reference to the need for protection for roomers and boarders; in other words, for tenants? If memory serves me well, I understand that was also the subject of at least one inquest in Toronto where the matter was of a tenant jeopardizing another tenant's safety.

Ms. Mahoney: I cannot comment on the inquest because I am not familiar with the situation. Those who were on the advisory committee took two different approaches to this problem. Bairstow's approach was to have some kind of quasi court that could meet on an emergency basis to deal with disruptive people. We imagine that is unconstitutional, that it falls into the same trap as what the Residential Tenancies Act was proposing, and it was declared unconstitutional. We thought that approach had no merit.

The advisory committee approach is the approach we have taken in this. The advisory committee approach says this is a question that is raised in good faith by both tenants and landlords. They believe the act is adequate. In situations of extreme disruption, the police should be called. That is their answer to that question, so we take the advisory committee approach.

Mr. Jackson: It is my understanding the advisory committee report indicated there are situations of risk and problems where some remedy should be sought outside the police, whose function basically boils down to that of an arbitrator or a mediator.

Ms. Mahoney: No.

Mr. Jackson: Those are the experiences I have been advised of. The advisory committee report does make specific reference to the notion that there be some adjustment in the Landlord and Tenant Act so that tenants are not put at risk by the situations that appear to occur and become more of a risk because of the unique relationship between roomers, as opposed to tenants in self-contained units, as currently set out in the Landlord and Tenant Act.

Ms. Mahoney: I think you are confusing the Bairstow report with the advisory committee report. Bairstow makes that recommendation.

To augment the Landlord and Tenant Act in some situations of supportive housing, the advisory committee has a whole section concerning supply and a section concerning support services for supportive housing. They recommend something that was first recommended by the Gerstein report five years ago, which is that there should be a crisis centre where people who are in a crisis can go. That is completely outside the purview of the Landlord and Tenant Act. They are not recommending that there should be an arbitrator outside the court system who is dealing with that. That is Bairstow's recommendation.

1750

Mr. Jackson: We may be in a position to have that confirmed or not confirmed. I will address to the chair my final question with respect to the

minister's absence from these hearings, so that he could respond to those points.

If I could go to the next point then, that has to do with your reference to ex-psychiatric patients in a noncare environment. I have some sympathy for the position that you have taken, but it seems to put even more in focus the question that I just asked you with respect to situations of potential risk between tenants. It is not the landlord who is going to suffer, but there may be some potential risks associated with an ex-psychiatric patient.

Mr. Reville has gone back to his committee to deal with the very fact of increasing the rights for psychiatric persons under active treatment. Again, in asking you that way, do you not feel that there may be some situations where fellow-tenant risk should be addressed, other than the current Landlord and Tenant Act which could make it very difficult to eliminate the source of that risk to the benefit of the other roomers and boarders?

Ms. Mahoney: I guess the short answer is no.

Let me tell you about ex-psychiatric patients and the risk they are at now. I work in Parkdale at Parkdale Community Legal Services. Many of our clients are ex-psychiatric patients who are tenants of rooming and boarding houses. Most of them pay 90 per cent or more of their rent for room and board. They are on disability pensions. They are paying \$350 a month, on the average, to share a room with one, two or three other people. Their rent is raised illegally. Their food is poor. Their landlord takes their welfare cheques illegally and makes them sign the cheques over to him. He will pay them an allowance of perhaps \$30 a month for all other living expenses.

This is exploitation. It is economic slavery. It goes against all the principles of natural justice. That is what happens when tenants do not have protection. If you go out and you ask these ex-psychiatric patients, "Does your landlord do everything that he can to make sure that you are not bothered by other tenants and that you can live your life happily?" the answer is, "No, he does not." These people are the most vulnerable. Giving them protection under the law will stabilize the situation, not make it worse.

Mr. Jackson: Perhaps you misunderstood me, because I am not suggesting that they not be included. I am suggesting that should there be a matter of risk between tenants, is there some other way to address it?

Ms. Mahoney: Yes, there is.

Mr. Jackson: I made it clear up front that their inclusion has a warrant that I do not think you are going to get objection to from people here. Again, I hope someone will come forward with the substance of some of the inquests where this issue became rather significant. I did not want you to defend a point that I am finding no one really objecting to.

Ms. Mahoney: Let me answer that. Yes, there is a way it should be dealt with. It should be dealt with outside of the Landlord and Tenant Act. It is not an issue of tenant protection. If there are people who are in crisis, then that is a problem for the Ministry of Health and the Ministry of Community and Social Services to deal with. If they are deinstitutionalizing people and not giving them adequate support services and not providing enough group homes and halfway houses, therefore, by default--having people go into the community who need these support services--that is a Ministry of Health problem. To try, under a tenant protection act, to write in something that is

not going to be used, or abused by landlords seeking arbitrary eviction, is to take the wrong approach. We are saying that is a health issue, not a tenant protection issue.

Mr. Jackson: Thank you for being so forthright with your responses.

Ms. Mahoney: Thank you for your questions.

Mr. Jackson: I have some questions for the chair.

The Vice-Chairman: Thank you very much, Mr. Jackson. Ms. Mahoney, I thank you and the deputants for appearing before us. You are welcome to remain for the next few minutes, but the committee will now turn to some procedural matters.

Ms. Mahoney: Thank you.

Mr. Jackson: I am concerned after having listened to two deputants and their concerns about the minister's response to the Bairstow report and the minister's response to the advisory committee report. There have been questions about the government's interest in this issue, generally, that have been raised here in these hearings.

My question is, has the minister advised why he or his parliamentary assistant is not here at this public hearing when such sensitive issues have appeared in the media and in the Legislature: the sensitive issue of whether or not they are sufficiently interested in the subject? I think this strikes at the chord of whether these public hearings are going to result in a bill that this government will bring forward. So my first question is, has the minister advised you of why he or his parliamentary assistant is not here to respond to these questions, and when we might receive input from the minister with respect to the advisory committee report and the specific recommendations contained therein?

The Vice-Chairman: Thank you, Mr. Jackson.

I am advised by the clerk that the ministers in question--the Minister of Housing (Mr. Curling) and the Attorney General (Mr. Scott)--have declined to participate at committee in a formal way because this is a private member's bill rather than a government bill. However, I understand that both offices have sent staff members to monitor the committee. I wonder if they would be good enough to introduce themselves in the audience. Perhaps you would step forward and introduce yourselves to members of the committee.

Mr. Priebe: I am David Priebe, senior policy adviser with the rent review policy branch.

The Vice-Chairman: Within the ministry?

Mr. Priebe: Within the Ministry of Housing.

The Vice-Chairman: Thank you very much.

Ms. Cohl: I am Karen Cohl, from the Ministry of the Attorney General, in the policy development division.

The Vice-Chairman: Thank you very much.

It is my understanding, members, that neither staff person is authorized to speak on behalf of the ministries or ministers, but they are monitoring the proceedings. The clerk has been given no further indication of any increased participation by the respective ministers or their ministries. I am open to any further motion.

Mr. Jackson: Would you entertain a motion that would specifically request both ministers in question to attend these hearings to respond to the questions? They can appear as deputants if they wish. Would that motion be in order?

The Vice-Chairman: Yes, it would be.

Mr. Jackson: And it would further indicate within the body of the motion that it would be to respond directly to the advisory committee report to the minister on roomers and boarders.

The Vice-Chairman: What I have heard of the motion so far is in order.

Mr. Charlton: On the question of the motion, I would like to move an amendment to it.

The Vice-Chairman: You are on.

Mr. Charlton: I think all of us would like to hear the responses to the two reports, but it might also be useful if, through the chair, we made every effort to get a copy, for each of the members of this committee, of the advisory committee report, since it would appear that deputants are going to be referring to it on a fairly regular basis. The responses will be helpful. The report will be even better.

The Vice-Chairman: I wonder if I might help us out here a little bit and suggest that what we really have are two motions that should be dealt with separately. One I will place in your name, Mr. Charlton, requesting a copy of the advisory committee report with an appropriate explanatory note about the number of references that have been made and the difficulty for the committee to proceed in its proper legislative work in the absence of a copy of such a report.

The second motion I will then put in your name, Mr. Jackson, to request that the Attorney General and the Minister of Housing and/or representatives of their ministries attend upon the committee in the usual fashion to answer questions and respond both to this bill and, specifically, to the recommendations contained within the advisory committee report.

Mr. Poirier: I have a question I would like addressed to the clerk through you: For a private member's bill, is it normal procedure for a minister, or minister's staff, to be here?

The Vice-Chairman: Sometimes yes, sometimes no. It is a discretionary matter. It differs from a government bill in that that is a requirement. It is discretionary. Okay?

Mr. Poirier: Thank you.

The Vice-Chairman: You have heard both of the motions. Let me take

Mr. Charlton's motion first, because it makes reference to the advisory committee report's being requested. All in favour?

Motion agreed to.

The Vice-Chairman: Now we will deal with Mr. Jackson's motion respecting attendance by the ministers. All in favour?

Motion agreed to.

The Vice-Chairman: I think that completes our business for today, members of the committee. May I simply remind you that you should have seen on your table this memo, under date of June 8, from legislative research; some background material on the matters before us. We have a full schedule of hearings tomorrow.

The committee will now stand adjourned until June 9, following routine proceedings. Thank you.

The committee adjourned at 6 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
LANDLORD AND TENANT AMENDMENT ACT
TUESDAY, JUNE 9, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitution:

Jackson, C. (Burlington South PC) for Mr. Partington

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Supportive Housing Coalition of Metropolitan Toronto:
White, D., Executive Director

From Ecuhome Corp.:

Kidd, A., Managing Director
File, K., Project Supervisor, Parkdale Pilot Project

From the City of Toronto:

Hall, B., Alderman, Ward 7

From Cityhome:

Cook, G., Director

From the Fair Rental Policy Organization of Ontario:

Grenier, W., Chairman
Hoffman, J., Director
Bassel, J., Co-Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 9, 1987

The committee met at 3:45 p.m. in room 228.

LANDLORD AND TENANT AMENDMENT ACT
(continued)

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

Mr. Chairman: I have two matters of business. First, there is a change to the agenda. The Ontario Real Estate Association has agreed to come in next Tuesday. That will be in addition to the agenda that is printed and has been distributed to you. Are there any questions about that?

Second, the Attorney General (Mr. Scott) has indicated that neither he nor the parliamentary assistant can be in attendance for the hearings as requested by a member of the Progressive Conservative Party, Mr. Jackson, who is not here at the moment. I thought I would put that in for the record. However, the member made the request so I thought I would indicate to you that we have not received a positive response back from the Attorney General.

In addition, there was a request made to the Ministry of Housing along the same lines, and we have not received a positive response back from the Ministry of Housing on that request either.

Finally, with respect to the advisory committee report, which was requested as well by this committee, that will be forwarded to the committee by the Ministry of Housing, I believe, at the earliest opportunity.

Clerk of the Committee: Late tomorrow.

Mr. Chairman: Late tomorrow is the time frame I have been given, so you can anticipate that will be coming forthwith.

Mr. Charlton: Could you repeat your agenda change which you dealt with first?

Mr. Chairman: On June 16, add after the 4:30 hearing, at five o'clock the Ontario Real Estate Association. We have a schedule which calls for five o'clock hearings every day that you now have an agenda printed for. We are just adding the last day.

Are there any further questions or comments? If not, I will move right into our agenda. The first group we will be hearing from is the Supportive Housing Coalition of Metropolitan Toronto. David White is the executive director. Welcome, Mr. White. We are pleased to have you here with us. Perhaps you could introduce the balance of your delegation for purposes of Hansard and the committee members' information.

SUPPORTIVE HOUSING COALITION OF METROPOLITAN TORONTO

Mr. White: Mr. Chairman, first of all, let me say we appreciate the opportunity to make this presentation to this committee. I am joined by Ms. Ruth McKeown who is the president of our board of directors.

By way of background, the Supportive Housing Coalition of Metropolitan Toronto is a nonprofit group whose mandate is to co-ordinate the development of supportive housing in Metropolitan Toronto for people recovering from mental health problems. As our name implies, we are a coalition made up of organizations that actually operate the housing.

The Supportive Housing Coalition does not operate directly; however, we are made up of a membership, approximately 20 of whom are nonprofit organizations that operate supportive housing right across Metropolitan Toronto. At the present time, our member organizations are providing accommodation for 400 people, and with projects currently under construction that will grow, probably by the end of the year, to approximately 600 people.

The Supportive Housing Coalition has been very active, particularly in the last year or so, in the nonprofit housing program. We are leasing accommodation for 220 people, or at least we soon will when some of our projects under construction are completed. We lease these buildings to the actual operators who, in turn, provide accommodation to the people who need the support.

1550

Let me tell you a little bit about what supportive housing is. It does two things: it provides affordable and adequate accommodation and it provides staff support. The staff in the homes assist people living there with skills such as cooking, cleaning, money management, conversational skills, that sort of thing, in an effort to help them to become more independent.

The type of housing we are operating consists of small apartment buildings, small households in which people share the kitchen and bathroom facilities, as well as larger households which, in most municipalities, would be defined as group homes. The definition of "group home" varies from municipality to municipality in Metro.

We wish to address our remarks to three types of housing and the applicability of the Landlord and Tenant Act to those three types.

I want to start with the question of rooming, boarding and lodging houses. Those are primarily provided, at least at this point in Metropolitan Toronto, by the private sector, although there are some nonprofit groups in the field as well.

The Supportive Housing Coalition's position is that the protection provided under the Landlord and Tenant Act should be extended to people who live in rooming, boarding and lodging houses. We are well aware that a large percentage of such people, in Metropolitan Toronto at least, are people who also have been treated in hospital for mental health problems. For many of them that is still the only accommodation that is available and that they can afford, in a manner of speaking. Even that accommodation can be exceedingly expensive given the incomes people are living on.

In recognition of the service that the boardinghouse type of accommodation provides, where not only the room is provided but also the meals, the board as well, the Supportive Housing Coalition undertook an initiative in 1985 and 1986 to try to upgrade standards in boardinghouses.

That ultimately resulted in the funding of Habitat Services, which was spun off as a separate organization. What Habitat does is enter into contracts

with both private and nonprofit boardinghouses. The contract requires the operators to provide good standards and, in return, they receive subsidies. That is an indication of our recognition that boarding and lodging houses do provide a service. We recognized that there was a need to upgrade the services; there is a continuing need to upgrade the services in much of the existing private sector accommodation.

Second, I want to speak about group homes, which are one of the forms of supportive housing that the Supportive Housing Coalition is involved with. Our position with respect to the people living in group homes is that the definition of "tenant" to include a roomer, a boarder and a lodger, as proposed in Bill 10, should not apply. There are a couple of reasons why we take that position.

One is that there are some special characteristics of group homes which make them quite unlike boarding and lodging houses. For one thing, the people living in group homes, by their very nature, must work together to perform the various tasks required to maintain an orderly household.

In group homes, staff do not prepare people's meals. They will assist people to make their own meals, for example, they might give some guidance as to how a particular sort of food might be prepared or they might give some guidance on preparing or planning menus so that the nutritional requirements are met. But the staff does not actually participate in making the meals; that is something that the residents of the homes must do.

You can understand that if the group home is set up in that manner, it means that everybody living in the house has to do his share and co-operate. If at any time a particular resident is not willing to do his share, then ultimately the operator of a group home has to have the means by which the person can be removed from the home.

The second thing that comes to mind that is different about group homes is that there is a heavy staff component. Some of the homes provide 24-hour support seven days a week. Typically, in order to accomplish that, there will be seven staff members assigned to a house which accommodates 10 people.

In order to make good use of those resources, it is necessary that the people living in them actually require that level of support. So, again, if somebody no longer needs that level of support, it is important that the organization has the ability to remove the person and make space for somebody who does need that level of support.

I should point out that one of the reasons why people may not want to leave a high-support group home when they no longer need the high support is that there are often very few affordable places to which they can move. At least in part, this problem can be resolved simply by increasing the supply of affordable housing in Metropolitan Toronto.

Third, we are also involved with supportive housing, which would not be defined as group homes. I mentioned that some of our supportive housing is actually in the form of apartments. We recognize that in an apartment, a person has his own key to the front door and lives as any other person would. But this implies that there is much less requirement for that person to co-operate on a day-to-day basis with other people. He is not living with other people. He may well be living in a self-contained apartment by himself. This starts to remove some of the force of our earlier arguments that are applicable to group homes.

There are also some households that are not actually apartments but provide low levels of support. Again, in some of those situations the arguments that apply to high-support group homes may not be quite so applicable.

The Supportive Housing Coalition takes the view that some form of protection is warranted for people who live in supportive housing. We think the provisions as set out in Bill 10 are not addressing the need. However, we do agree that people, even in supportive housing group homes and other types of supportive housing, are entitled to be protected against arbitrary measures on the part of the operators. We do not think this is a big problem at present in Metropolitan Toronto, but we recognize the principle that even the people living in our homes, and the homes our members operate, are entitled to some form of protection.

The Supportive Housing Coalition has begun to study this issue. Since Bill 10 was put before the committee and the public hearings were announced, we have not had time to come to any conclusions as to what kind of mechanism should be put in place. However, we do recognize that there is also a need to provide protection for the people who live in our housing. We would like time to develop a position on this. We would like very much to be consulted before this committee or the Legislature takes any final position on the extension of the Landlord and Tenant Act to residents of supportive housing.

Let me close by saying we recognize, in some cases, that some private sector landlords may be unwilling to continue to keep their accommodations on the market. They may be unwilling to comply with new regulations if the Landlord and Tenant Act is extended to people living in their buildings. We think this should not deter the Legislature from acting. In addition to providing this protection, the Ministry of Housing, and ultimately the Ontario government, should be expanding the nonprofit housing program with initiatives such as the current Project 3000--make it not just a one-year commitment, but continue to fund programs like it for several years into the future--until the affordability issue for single people of very low income is dealt with.

Mr. Chairman: Thank you. There will be questions from members of the committee. Mr. Cooke, you are first.

Mr. D. R. Cooke: I appreciate the presentation Mr. White gave. It is very helpful. I think it opens a few questions, though, for us to probe.

To begin with, you talk about a large proportion of roomers and boarders being ex-psychiatric patients or perhaps people who have had some borderline involvement in that area. Do you have any figures, even rough figures, as to what proportion they would be in the city of Toronto?

1600

Mr. White: I do not know if I can give it to you in a percentage form. The Metro community services committee's subcommittee on the housing needs of the homeless population undertook a study in that regard last year, so these figures are relevant to 1986. They found there were at least 2,000 people who had been treated for mental health problems in Metropolitan Toronto who are living in the commercial boardinghouse sector. They also found that about 40 per cent of the 10,000 or so people who use the hostel system were people with mental health problems.

Mr. D. R. Cooke: Would you agree with me that what we really need

for these people is something quite different from even the Landlord and Tenant Act? Perhaps we need live-in friends-nurses-parents to assist them in life.

Mr. White: In some cases, yes. What you are talking about is essentially what the Supportive Housing Coalition is. Supportive housing provides different levels of support. I mentioned that in some cases the staff are available 24 hours a day. Not many of them actually have live-in staff. Usually the staff members work shifts. There are a few with live-in situations. There is a need for that kind of accommodation, but there is also a need for accommodation that provides lower levels of support.

Some of the housing that our member organizations are operating is in the form of housing where staff will come in on a daily basis but are not there overnight. They may come in just on a weekly basis; in some cases, they may come in just when called by the people who live in the house. There is a whole range of different alternatives presently being provided.

Under Project 3000, the Supportive Housing Coalition and its member organizations applied for 564 new units to be built, and we can document quite adequately that there is a need for even more than that level of commitment to funding supportive housing in Metropolitan Toronto at all different levels of support.

You mentioned nurses. The people who provide support to people in our buildings may sometimes be qualified nurses, but it is not so much their nursing qualifications that qualify them for that job. Essentially, what they do is provide very practical assistance to help people become more independent.

They assist people to prepare more nutritious meals, for example. They assist people with conversational skills. If somebody is going out for a job the next day, they might spend some time with that person running through what is likely going to be asked in an interview and helping people bolster their confidence a bit so that if they do go out and face a potential employer, they can present themselves quite well and, hopefully, get the job.

It is that kind of very practical support that staff in supportive housing provides. I agree and certainly the Supportive Housing Coalition agrees with your point that there is a need for much more of that kind of accommodation in Metropolitan Toronto.

Mr. D. R. Cooke: If I understand what the coalition is doing, you are taking on some of these people and setting them into group homes and so on where they can get some help.

Mr. White: Yes.

Mr. D. R. Cooke: You are also stressing that there is a large number out there living in rooming houses and, presumably, being used or abused by landlords.

Mr. White: Yes. We are certainly aware of that. It was because we were aware of it that we supported the Habitat Services initiative. It is now a separate organization from the Supportive Housing Coalition, but basically what it does is enter into contracts with both private and nonprofit boardinghouse operators. In return for those operators upgrading their standards to decent, adequate levels, including the provision of nutritious meals three times a day, the operators are entitled to subsidies. Habitat goes

out and inspects these houses on a regular basis to make sure they are complying with the contract.

That is a fairly new initiative that we support, and it was certainly in response to our awareness that the commercial boardinghouse sector was not, on its own, adequately addressing the housing needs of former psychiatric patients.

Mr. D. R. Cooke: To hand one of these patients a notice under the Landlord and Tenant Act and force a landlord to give him 90 days' notice, as opposed to the short time, really does not redress the problem. Is the landlord not likely to get around that one way or another, simply by force of personality, if nothing else, in a lot of those cases?

Mr. White: Well, yes. We think that many people with mental health problems are certainly vulnerable to coercion; there is no question about that. Many of them, as a result of their illness, have had limited opportunity to participate in processes where they defend their own rights, so they certainly can be vulnerable to coercion.

However, we think it is important that the rights be clearly established. What that may mean is that various other resources in the communities, maybe the legal clinics that operate in various parts of Metropolitan Toronto, can, once rooming-house and boardinghouse tenants have legal rights, start assisting them, helping them understand what their rights are and going to bat for them in terms of defending those rights as well.

Mr. D. R. Cooke: It may be available and I may not have seen it, but I am just wondering what proportion of the roomers and boarders we are dealing with may be this vulnerable part of the population perhaps in need of more than their rights under the Landlord and Tenant Act. I do not know whether that material is available.

Mr. Chairman: Not that I am aware of. I do not know whether research has any.

Ms. Evans: I will have a look.

Mr. Chairman: We will try to provide the committee with some background on that.

Mr. D. R. Cooke: Thank you.

Mr. Chairman: Mr. Cooke, with respect, I will move on to Mr. Charlton now and try to share the questions. Mr. Partington also indicated he wished to raise some questions.

Mr. Charlton: My questions relate to the matters you raised around group homes and supportive housing, Mr. White. I think we clearly understand the concern you have and what you are saying to us, that it is a different kind of operation in the sense of the support program and the ending of the need for the support program or, in the case of the group home, the inability to co-operate in what is supposed to be a co-operative program in a group home.

I think we understand those concerns. You have suggested some time to study and report on the definition of supportive housing, and so on and so forth, and talked about providing them with adequate protection under other means. Can you give us some kind of idea of what you are thinking about in terms of alternative protection for people in those sectors?

Mr. White: Unfortunately, the other means are not things that the Supportive Housing Coalition has had time to consider at this point. But, as we understand it, under the Landlord and Tenant Act right now, one of the grounds for eviction in some assisted housing may be that people no longer qualify for the assisted housing. Maybe they do not qualify because of their family size or something or they do not qualify because their incomes are higher than would be applicable.

It may be possible to look at the special nature of supportive housing to determine what it is that qualifies people. These qualifications, I suppose, would have to be clearly laid out in advance. On the basis of people not meeting those qualifications, they could be removed in the same way they could be removed from assisted housing. That might be an approach--

Mr. Charlton: You are saying, perhaps under the Landlord and Tenant Act but with some amendments, to make some of the exceptions in specifically targeted assisted housing programs apply to these kind of supportive programs.

Mr. White: I do not believe the Supportive Housing Coalition would absolutely rule out the Landlord and Tenant Act as a means of accomplishing it. I do not believe that the amendments as proposed in Bill 10--

Mr. Charlton: Address it.

Mr. White: --are adequate to do it, but there may be other things you can do with the Landlord and Tenant Act. I am suggesting that one area of inquiry probably worth looking into further is that whole area that sets out qualifications for some other types of housing. Maybe we can build on that as a means of setting out and then making clear what the rights are of people in supportive housing as well.

Let me just say again that the Supportive Housing Coalition clearly recognizes that even people in our homes--not only in private homes, but also in our homes--should also have access to the law in some way, and we agree that it should be some structure which is independent of the management or the operator of the supportive housing. We accept that as a principle. We want to figure out a mechanism for doing it.

1610

Mr. Charlton: Okay, thank you.

Mr. Chairman: Mr. Jackson wishes to take the position of Mr. Partington, who had to leave. You have the floor, sir.

Mr. Jackson: Mr. White, I was not here to listen to your brief, but I have had a chance to read through it. Could you advise me whether there were exemptions other than the ones mentioned in your brief that were discussed by those who helped draft this response?

Mr. White: Towards the end of the brief, we mention that there is a need to define what we mean by supportive housing. In its narrowest sense, the way we use it, it means accommodation for people with mental health problems, similar to what we are operating, but we do not have a very precise definition. Other groups that serve people with other needs may refer to their housing as supportive housing as well. It is a generic term that is used quite broadly.

There are also nonprofit boardinghouses that are starting to be set up.

Their purposes are similar to some of the supportive housing that we have already set up, but one of the qualifications for living in it, given the way it is funded, may be that people have mental health problems.

The term is used very broadly at the present time. Quite clearly, if an exemption were going to made in the Landlord and Tenant Act for supportive housing, you would have to define the term pretty precisely. Otherwise, some of the worst operators presently operating in the city, most of whose residents are people with mental health problems, might argue that their accommodation is supportive housing, and I think we would very much want to avoid that kind of situation.

We want to define it very closely. Picking up on Mr. Charlton's suggestion, maybe if we look at the special conditions that make people eligible for supportive housing, we can build on that and figure out a way of doing it.

Mr. Jackson: Are you familiar with Bill 59, which was an amendment that I tabled with respect to Mr. Reville's Bill 10? Bill 59 refers to an exemption for a private home owner who is living in his home and providing space for four or fewer roomers or boarders. Are you familiar with that suggested amendment, which would be an exemption?

Mr. White: I am not familiar with it. It is not particularly applicable to the kind of housing we operate. Even that situation, I think, could lead to exploitative situations. It is quite possible that somebody who lives in the house and provides only a limited amount of accommodation could still be quite exploitative in his operation, so I do not know whether that helps us too much.

Mr. Jackson: In Halton region, where I am from, we have the Halton Adolescent Support Services, which is a network for adolescents who are experiencing difficulty for a variety of reasons. These are generally in the mental health area. There may be problems with the courts or problems at home.

Part of the supportive response provided by Halton Adolescent Support Services is to assist with accommodation. We run a group home, but because we cannot expand our group home, we have to find accommodation within the community. We have a co-ordinator, and that co-ordinator helps to find rooming-house situations in private residences for these individuals. The landlord becomes, in a sense, part of the supportive network.

The concern expressed by Halton Adolescent Support Services is that this bill, as it is written, will severely limit the numbers of private citizens who would be forthcoming to provide that kind of housing in a community with a zero vacancy rate.

I realize that my support service group does not appreciate the unique difficulties of, say, Metropolitan Toronto. But when I am here in Metropolitan Toronto I sometimes have trouble conveying the concerns of the community of Burlington or Oakville or Milton or Georgetown, where we are faced with this difficulty. It is not supportive housing by definition, but then again it is supportive housing, because it is the only type of housing we can find for these young people.

Maybe asking you for a comment now would be unfair, since you were unfamiliar with the amendment, but I would ask you to leap outside of your immediate Metro Toronto experience and consider other areas around Ontario.

Perhaps your group might reflect on that amendment and consult more widely with social service agencies in the province which are very concerned about the impact this amendment is going to have on communities like Kitchener and London, where we are not experiencing to the same degree the difficulties in Metropolitan Toronto.

That is not to say we are not experiencing those problems, but we are not experiencing them in the same context. The affordability network is entirely different; the matrix is structured a little differently in those communities.

Mr. White: I think there is a qualitative difference, certainly between most agencies which are in the field because they are interested in providing a service, as opposed to many commercial boardinghouse operators who are in the field because they are interested in making a dollar.

I do not want to be so arrogant as to suggest that everything is perfect in the social service field either. As I indicated, our organization recognizes that there needs to be some means of extending rights to people in our housing as well. However, I think there generally is a qualitative difference. I do not think this province faces a crisis of agencies exploiting the people who come to them looking for affordable supportive housing.

Mr. Jackson, you mentioned a particular agency out in Halton, and I am sure it is overseeing the arrangements it is making and making sure there is not any serious exploitation of the people living there. But there is another thread in this idea which I think may be in your comments or your question, that is, there is some special condition relating maybe to the behaviour or something of the people who live in supportive housing.

I think the Supportive Housing Coalition at least would want to be very cautious about making it possible to evict people based on some expectation that their behaviour is going to be such that they need to be evicted from their housing very quickly. I do not think that is the thrust of what we are saying.

What we are saying is that there are special services provided by some forms of supportive housing that are expensive to provide and do not need to be provided at nearly such a high level to people throughout their lives and, on the basis of that, there might be a reason for having them move on to something else. If there is something affordable for them to move on to, that certainly lubricates the process and removes much of the problem.

The other thing is I mentioned that sometimes people living in group situations may not want to co-operate with the others in the house to get meals and that sort of thing. That is not something which is only applicable to people with mental health problems; that is something I think all of us can understand. Not many of us, given a choice, will live with 10 other adults if we do not need to. There may come a time when we just cannot quite bring ourselves to co-operate with 10 other people to do things, so we tend to try to live alone.

That same situation may well apply to persons living in a group home. The time may come when they just cannot be bothered working with 10 other people in the house. On the other hand, there is nothing else for them to move to, so they tend to drag their feet, and the operator needs to be able to intervene in that situation. But it is not necessarily a condition of their mental health that might cause them to behave in that way.

1620

Mr. Chairman: I know there are further questions, Mr. White, but we have a modest time problem. With apologies, I am going to have to close off this part of the hearing at this time. I want to thank you and Ms. McKeown for coming before us and for the presentation you have made to the committee. Thank you very much on behalf of the members of the committee.

Mr. White: Thanks very much.

Mr. Chairman: The next group we have coming before us, with apologies for starting a little bit late, is Ecuhome Corp. We have Ann Kidd, the managing director, Jennifer Mills, project supervisor for Danforth Ecuhome, and Kim File, project supervisor for the Parkdale pilot project. We welcome you to the discussions of this committee. Perhaps you could just identify yourselves individually so we know who is speaking, then you can begin your presentation.

ECUHOME CORP.

Miss Kidd: I am Ann Kidd, the managing director of Ecuhome.

Mrs. File: I am Kim File, the supervisor of the Parkdale pilot project.

Miss Mills: I am Jennifer Mills, Danforth Ecuhome supervisor.

Miss Kidd: I would like to begin by thanking the committee for the invitation to come and speak to Bill 10 today. I believe you have some documentation before you on Ecuhome Corp.

Mr. Chairman: Yes, we do.

Miss Kidd: What we would like to present to you today is, first, a brief description of the nature of the corporation and who we seek to house by our program, then to demonstrate in some way to you, for your information and consideration, our history of where we have struggled in the past about how and when to terminate the residency of someone who is housed within the Ecuhome program and why we came under the Innkeepers Act approximately two years ago because of that.

Following the description, we table before you the procedures we engage in when we terminate a resident's occupancy with us. That is followed by an appeal procedure, for which every resident who is asked to leave the program is eligible.

If I can begin, Ecuhome Corp. is a charitable nonprofit organization operated through the Anglican, Baptist, Greek Orthodox, Lutheran, Presbyterian, Roman Catholic and United churches. It is a unique ecumenical venture, in partnership with the provincial government, and has been in existence since 1983. The provincial government is represented by the Ministry of Community and Social Services.

We provide housing for single adults between the ages of 19 and 65, who are in Metropolitan Toronto, have a low or fixed income and are either inadequately housed or unhoused at the present time.

We operate housing projects in various locations in the city. To date,

we have three such programs. Each operates as a licensed boardinghome program, so that the residents are boarders and lodgers. Each operates from a sponsoring church of one of the seven faith groups I mentioned before, where not only does a resource centre exist for staff to operate out of, but also it is an activity centre for residents. Each project purchases, renovates, furnishes and equips a home prior to folks coming into the program. Right now, we operate eight homes across the three projects.

Each house is a co-operative living model in which several individuals will share accommodation. Houses have no more than 10 individuals living in them who all share in household chores and maintenance of the homes. There are weekly meetings that allow for the discussion of common items of interest or difficulties that may arise that the group can work on together to solve.

Project staff are available for support and co-ordinates programs such as nutrition, cooking, budgeting, leisure planning and other activities. They are also responsible for advocacy and assisting residents with resources outside our program.

We charge a monthly fee geared to income, which includes rent, often food, depending on the project location, and personal supplies. In order to adequately serve those who are in need of housing, Ecuhome has been established to further the right and dignity of individuals to clean and affordable housing. In some cases, an individual may threaten the integrity of the program by placing himself or herself, others or the actual program at risk. In these circumstances, an individual is asked to leave the program under the Innkeepers Act.

Ecuhome Corp. must retain the ability to terminate residency in certain circumstances to provide continued high-quality low support for all its residents. It is therefore imperative that Ecuhome be exempt from coming under the Landlord and Tenant Act and can thereby terminate an individual's residency within the established procedural guidelines that we would now like to present to you.

When an applicant comes to the Ecuhome program, he or she receives a contractual agreement which states that Ecuhome comes under the Innkeepers Act. The agreement outlines the essential aspects of the terms of the residency, i.e. that the resident lives co-operatively and must demonstrate respect for the safety, comfort, security and privacy of other residents in the home. It suggests what the fee for food and lodging geared to income will be and various rules, like no in-house alcohol or nonprescription drugs. There are no visitors who are unrelated to residents permitted in the house from 11 in the evening until seven in the morning.

The terms further explain the consequences if there is a violation or neglect of the terms of residency, and each agreement is signed by the resident, witnessed and dated. A copy is given to the resident and a copy is located in the project office.

The procedure we follow should there be a violation of or negligence concerning any of the terms of residency is that this will result, first, in a verbal warning being given by staff, identifying the area of concern. Then the resident and staff will agree to the corrective action needed and state a time frame for that completion in accordance with the terms violated or neglected.

If a resident cannot comply but is willing to do so, staff will negotiate the terms of corrective action to assist the resident in complying

and providing the needed resources. If a resident is able to comply, but is unwilling to do so or does not agree to the corrective action necessary, staff may issue a written warning and a time frame for correction within the same terms of reference that were violated or neglected.

If a violation or negligent action persists after either the verbal or written warning, staff will issue a written warning. Once a resident receives at least one written warning, staff will follow through with the consequences that have been stated. Where termination of residency is the consequence, the resident will receive, in writing, notification of the date he or she is being asked to leave the program. Wherever possible, sufficient time will be allotted by staff for the resident to arrange alternative accommodation.

When health and/or personal safety of an individual is at risk, staff may terminate the residency immediately, with the assistance of appropriate professionals. The balance of monthly food and lodging fees are refundable to residents who do not complete that month's residency. Any resident whose residency has been terminated by Ecuhome is eligible for an appeal process. That is stated on the termination notice that residents receive, with an explanation of the process.

An admissions committee, comprised of local church, community and agency members, will be constituted for assisting staff through the admission process at the beginning of residency, as well as receiving the appeals for residents who wish to appeal the process of their termination.

That appeal process is as follows. The admissions committee will receive written documentation and a letter of appeal from the resident within seven days of termination and, at the same time, a written report from staff within seven days. The admissions committee will meet regarding the appeal, with a minimum of three people and no staff present. Decisions of this committee will be confidential, final and binding and will be available for all people involved in the process within seven days of the meeting.

Finally, the appeal process is in written form. No personal appearances are requested. Should a resident have difficulty in presenting a written appeal, the staff will request assistance in having that appeal presented to the admissions committee.

Mr. Chairman: Does that conclude the total presentation?

Miss Kidd: Yes.

Mr. Chairman: Thank you. There will be questions. Mr. Jackson, I believe you are first for questions to the delegation.

Mr. Jackson: Am I? Are you asking me?

Mr. Chairman: I noticed that you were making some sign requesting recognition and I am doing that now. You have the floor.

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Mr. Jackson: I want to thank the deputants for their clear, concise and focused brief. It is going to be quite helpful.

The first question I have has to do with the terms of your detailed notice of termination agreement. Were they established independently or set

down by the Ministry of Community and Social Services as part of the terms of your contract with the ministry?

Miss Kidd: They were done internally within the corporation. Most of our procedures are presented by staff and go to the appropriate committee of the board.

Mr. Jackson: So it was not a precondition by the government.

Miss Kidd: No. The Ministry of Community and Social Services funds us in two ways: the capital funding for the purchase, renovation and furnishings of homes and a small staffing subsidy which assists us in doing that. We are not in any way a group home or treatment program; we are supportive housing. So we are not subject to the rules and regulations of a treatment program.

Mr. Jackson: If I can refer to the two points in your brief--I believe it is the second-last paragraph on page 1 and point 8 in the termination procedures--you make reference to termination for the reasons of risk. Could you give us some examples of where a resident may be putting another resident, in staff's opinion, at a degree of risk? You do not have to provide names. I am sure the chairman advised, when dealing with personal matters involving a tenant and his rights, that it would be wise not to make reference to individuals.

Mrs. File: I would not think of it. We had numerous occasions at the start of our project--we were the first project under the Ecuhome Corp.--where the risk was to either the tenant himself or another resident. It was usually for reasons of violence. At some point during the person's residency in the house, his behaviour, for a number of reasons, came to the point where he chose to act out in a violent manner. We had situations initially, when we were under the Landlord and Tenant Act, where we had to have police come to the house to have the person be actually asked to leave. They were throwing chairs and furniture at other residents and at staff. We had knives used, etc.

The difficulty we were in was that we had to evacuate the rest of the house, because we were not in a position of being able to ask the resident to leave immediately. So it meant moving eight other people to some other kind of accommodation so they would be safe, while that person, in actual fact, had the rest of the house to himself.

Mr. Jackson: Yesterday we heard from the Coalition for the Protection of Roomers and Boarders. They had indicated that in situations of problem risk they felt the Landlord and Tenant Act should not be a factor, given that you had the option to call the police. That is why I was intrigued by your reference to the fact that under the Landlord and Tenant Act, you had to go through the police. Could you expand on where your experiences with that were not helpful and did not produce the desired results?

Mrs. File: The difficulty is that even if the police responded and any other professionals we actually had to call in--because we have mental health professionals, if it has been due to psychiatric difficulties--they cannot act in actually asking the person to leave either. The fact is that the house is that individual's house as well, and behaviour that takes place in that house sometimes--it would be like your own house; they are not under any kind of jurisdiction to act.

They were saying, at the same time, that we would have to come in under

the Landlord and Tenant Act, we would have to give the person two months' notice, etc. During those two months, that becomes the difficulty, as to what actually would occur during that time. When we came under the Innkeepers Act, the police were very helpful in being able to assist someone of a violent nature to leave immediately, if that was necessary.

Mr. Jackson: If I read your brief carefully, are you suggesting that perhaps the single most important element of concern about seeking an exemption is being able on infrequent occasions to deal with a problem resident and being able to respond quickly? Is that the major area that would complicate the efficient operation of your service delivery?

Mrs. File: I think it might be the major area, but it is certainly not the only area where I think we have concerns in coming under the act. That is the one, as you say, that is addressed in point 8, when asking to terminate the residency immediately. Otherwise, point 7 would usually provide the conditions, if the termination were not for safety reasons.

Mr. Jackson: You are familiar with the Residential Tenancies Act, which currently calls for an exemption for tenants. I will read you the one line and ask you whether you feel that is sufficient to meet the concerns that you are expressing to us.

The Residential Tenancies Act calls for an exemption for "living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care." Is it your understanding that that section of the Residential Tenancies Act would provide sufficient exemption for you?

Mrs. File: I am not sure that it would at this time, since our housing is seen as only housing; it does not involve any kind of real therapeutic or rehabilitative treatment, so I am not sure whether we would be covered under that section.

Mr. Jackson: Perhaps, Mr. Chairman, we could ask legal counsel to determine whether the current clause 4(e), an exemption that currently exists in the Residential Tenancies Act, is sufficient to address the concerns raised by the Ecuhome deputants today and whether we would be able to communicate that information to them.

Mr. Chairman: We do not have legal counsel other than research here.

Mr. Jackson: Can research not check that?

Mr. Chairman: Research has already agreed to check that, so we will follow through on that matter and get a response back to you.

With your permission, I am going to have to slide along to another member of the committee with respect to other questions. I am trying to distribute the questions equitably. I knew you were trying to get to a point, and we will follow through on that, but I have to move forward to Mr. Charlton now and then to Mr. Cooke, both of whom are waiting with great anticipation.

Mr. Charlton: I will try to be brief, Mr. Chairman.

Mr. Chairman: Good.

Mr. Charlton: There are two areas I would like to ask you about, and

they both relate to what you have described as the admissions committee. Presumably, from what you are saying here, the admissions committee is doing some kind of screening or selection of the residents prior to their occupancy.

Miss Kidd: In conjunction with staff.

Mr. Charlton: Yes. What kinds of things are they screening for? What are they looking for in particular?

Miss Kidd: Applicants who come to the program meet the basic mandate of being single adults from Metropolitan Toronto between the ages of 19 and 65. Beyond that, if a vacancy in a given house exists, a person is eligible according to need, and that need is broken down. We have the objective opinion of an admissions committee, so the staff do not prescreen and make the final decisions for that admission process in all cases. But there is a great variance in terms of a person's requirement, and it is very difficult, as mentioned in some of the previous comments. The group of people that we seek to house is not sufficiently well defined to be sorted under basic needs like care or rehabilitation. If we were to give you a profile on two or three residents of each house, you would see a background.

The term that the government has used for our purposes is "socially disadvantaged," and it covers everything. "Low or fixed income" means that most of our people are chronically unemployable, and may be on family benefits allowance or welfare. Others are in employment programs or have jobs, but only earn up to minimum wage. It is generally thought that anyone earning over minimum wage is not eligible for an Ecuhome program, but eligibility is based on need. The kind of people who come in require a housing program with some support, but we find there is a great need for advocacy and resource finding in the community on behalf of our residents.

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When we talk about violent incidents, the corporation spent a great deal of time developing policies and procedures before there even were residents, and there were all sorts of things like consumer participation built into the program. We thought, in some cases mistakenly, with middle-class values, that a person who came into the program and was sheltered, had food, etc.--whether coming from living in 24-hour doughnut shops and bus shelters or whether coming from a hostel or from another boardinghome program--that such an individual would feel much better about himself.

As self-esteem went up, we thought they would become active participants in the program and we sought to put them on committees. The admissions committee is part of the local supporting committee that each project has. Our values were when people wanted to participate in a program, they would sit on committees and do all sort of interesting things like that to determine the rules and regulations.

What in actual fact happened--and that was what Mrs. File referred to earlier as a lot of the violence in the homes--when individuals came in and were housed, fed and started feeling good about themselves and the program, they rose to positions of leadership in the houses and in the committees we provide in our houses. Those positions of leadership, defined from the streets and the folks we intend to serve, were demonstrated not by sitting on committees and determining criteria but by intimidation of fellow residents, power tactics. Those were the leadership things defined. Those are the folks we have in our housing program and they do not come necessarily with a mental

health background, but they come with their (inaudible). We have a lot of people with alcohol-related problems and a whole variety of things.

We were meant to try to catch everyone and suggest low support--we were designed in 1983 to catch single adults and, of course, there are many more programs now available for single adults--and to catch people who fell through the cracks. We were not a high-support program that caught traditionally labelled people in any one given category where specialized staff would deal with that problem and that problem alone.

We were meant to be clean and affordable housing, but we deal with people who traditionally, or through lack of opportunity, have been unable to support themselves in affordable individual units somewhere. They come with the need for shared and co-operative living, and that is what the program is based on; a network is provided.

Mr. Charlton: On the determination aspect of this procedure that you have set out for us, Mrs. File, in your response earlier you seemed to indicate that there were initially more problems in the first project than there are now overall. Am I correct in taking that out of what you said?

Mrs. File: Yes. The difficulties that we had with the violence and alcohol-related issues have somewhat died down to what they were in the first year of occupancy. I think a lot of that was because we were an unknown quantity. Initially, a lot of the people who came into the project saw it as being housing and did not see the fact that you had to be able to live co-operatively and take part in doing chores, cooking, etc. The population we have now, regardless of what project, is slightly different from what we had initially.

Mr. Charlton: I do not expect you necessarily to be able to provide us with this this afternoon, but would it be possible for you to provide us with some information about that termination process, the consideration of termination, how many of those problems get resolved by discussion, the stages you have set out here, how many occasions you are finding when you have to actually issue the notice of termination and what is happening with those in the appeal process? Could you provide us with some of that?

Mrs. File: I do not know how much of that we will be able to do right now, but we definitely keep that kind of information at the office. We will be able to give you numbers.

Mr. Charlton: We would appreciate that, just to have a look and have a sense of how the thing works.

Mr. Chairman: Thank you, Mr. Charlton. With his usual capacity for brevity, I will now turn to Mr. Cooke.

Mr. D. R. Cooke: I was going to pass, Mr. Chairman, but you have challenged me.

I was a little disturbed initially when I was listening to your presentation because I gathered the criteria were low or fixed income. Now I am not sure those are the criteria. It is just lack of housing. You are in fact engaged in supportive activities, emotionally etc. Do these people consider this place to be home while they are there? You are nodding yes. This takes it out of the purview of, normally, the Innkeepers Act. The Innkeepers Act deals with inns where you visit. Naturally, innkeepers are given more power than landlords.

Mrs. File: Yes. Unfortunately, the thing with the Innkeepers Act is that the document we are using is a number of years old. You are right. It deals mostly with where you keep your horses and things like that. This obviously has nothing to do with what we are talking about now.

Interjection: Very important stuff.

Mrs. File: Exactly. Where to keep the stable people.

In most regards, you are right, and it is very different from what we are actually providing. The reason we ended up--it was a long number of months before we resulted in that--was because of the main thing that they do have the authority that the Landlord and Tenant Act does not have, in that you can ask someone to leave immediately if there is a problem. This is the main reason we come under that.

We do provide minimum support housing. We certainly provide basic counselling, linkage to other agencies and the opportunity to learn life skills that you certainly would not get in an inn, hotel or anything like that. We also do not have any kind of lengthy stay connected with our housing at all other than the fact that we are not hostel- or crisis-type housing.

Usually, someone coming to us would normally be staying a minimum of one month. In some cases, we have people at our project who have been there since its inception three years ago. That is fine. We are able to serve people who come on a more short-term basis and people who consider it their home until such time that they are no longer able to take benefit of the housing.

Mr. D. R. Cooke: Your basic message to us is that in projects of this nature you need to have the power to eject immediately. Presumably while you do not endorse some landlords' ability to do this you feel, because your motives are pure, that you should maintain that power.

Mrs. File: Yes, that is the basis of it, but only because we feel, from what we have presented today, that we do very much try to afford the resident who is being asked to leave all sorts of opportunities and rights to not only appeal but also to be told what the difficulty is and to change the behaviour. If he needs assistance to change the behaviour, we are able to provide it as well through either our own or outside agency staff.

A lot of other landlords are not in a position to provide this. It may be that they do not want to or they may not have the means or affordability to be able to do it. We are trying to say that not only can we do that but also we do do it. In this way, we feel we can be exempt from the act and still uphold residents' rights as well.

Mr. Chairman: I would like to thank the delegation from Ecuhome for a very interesting presentation. Also, if I may, I would like to compliment you on the work you are doing. From the presentation I heard, there is no doubt you are filling a gap in some of the housing and accommodation needs, particularly in this area. This is commendable. I wish you well. You are a relatively new organization, having started in 1983, but it sounds like you are on a very solid foundation. Your input into this whole question will be of use to the committee. I thank you on behalf of the committee members.

Mrs. File: Thank you.

Mr. Chairman: Respectfully, I request the members of the committee to attempt to help the chairman stay on time.

Having said that, I would like to call forward Alderman Barbara Hall. This is presentation 6 in your documentation. We welcome Alderman Hall to our discussions and we look forward to hearing your presentation. You may want to introduce the good-looking gentleman next to you, an old friend of mine who I have known for many years and who will no doubt add a great deal to your presentation today, Barbara.

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ALDERMAN BARBARA HALL AND GEORGE COOK

Alderman Hall: It is my pleasure to introduce George Cook who is commissioner of housing at the city of Toronto and also general manager of Cityhome, the Toronto Non-Profit Housing Corp.

I would like to thank the committee for the opportunity to speak to you today. The housing problem and the situation of homelessness is something that people at all levels of government are confronted with today. The only way we will find a solution is by working together. I see today as an opportunity for us to do that.

Affordable housing is a very difficult thing to find in downtown Toronto these days. For one class of renters, it is not only difficult to find but can be almost impossible to hold on to given the archaic and unjustified exclusion of roomers, boarders and lodgers from the definition of "tenant" under the Landlord and Tenant Act.

Rooming houses represent one of the most affordable living options available. Most tenants in those houses fall into the low-income bracket, generally well below the poverty line. They are often there not by preference but by economic necessity.

Although roomers are often poor and their poverty dictates their living arrangements, it should not dictate differential treatment under the law. In fact, the exclusion of roomers and boarders from the Landlord and Tenant Act does just that, resulting in discrimination on the basis of economic class. By virtue of having a low income, one is denied the fundamental protections of the law afforded to wealthier tenants. Why should security of tenure hinge on the luxury of a private bath and kitchen?

A quick tour of Toronto's Ward 7, my ward in downtown Toronto, reveals the tragic results of inadequate protection under the law. Roomers are being evicted without reasonable cause and without due process. At the present time, I am aware of about a dozen houses where the residents are presently being evicted. In some they receive notices; in many they get a knock or a foot on the door. I have listed a number of addresses in my brief. All of these--I think there are 10 of them--are addresses currently under siege and they represent well over 100 people whose homes are threatened.

The reality for the people in these houses, if they lose that housing, is that they will end up on the street or in hostels. Many of them, because of the criteria for housing subsidy, would be ineligible for social housing. We all are well aware that there are long, long waiting lists for most social housing. The reality is that the kind of housing many of these people have been used to is rapidly disappearing and there really are no options out there.

One need only look in the Toronto papers at the number of rooms to rent and imagine 100 people appearing on the scene in one month, and that is just

100 in Ward 7, to realize that the reality of these people being housed is that they will not be.

The ongoing loss of housing has not gone unnoticed. The call for the inclusion of roomers under the Landlord and Tenant Act has echoed in the halls of Queen's Park for a long time. The litany of reports endorsing the need for security of tenure is very long.

As recently as earlier this year, in the report to the Minister of Housing (Mr. Curling), the Advisory Committee on Roomers, Boarders and Lodgers talked about this need. A long list of reports going back to 1974 all repeat the same thing, the need for inclusion.

The verdicts of five coroners' juries have found a clear link between the lack of security of tenure and the death of homeless persons. Those juries recognized that in a climate such as ours housing is not a luxury but a basic human need. Why have the legislators of the past 15 years failed to acknowledge this?

A wealth of good counsel has gone into these reports. Does not the very length of the list cause some embarrassment? This government has pledged itself to a policy of assured housing. Surely, security of tenure is one of the most basic elements of such a policy.

The Attorney General (Mr. Scott), who also represents a large part of my ward, has told roomers in the area that they will receive protection very soon. If the government has plans to improve the lot of roomers, then I challenge you to table those plans as amendments before this committee. I urge you not to make this a paper process by defeating Bill 10 and introducing your own legislation at a later date. Roomers cannot afford to wait. They have already waited far too long.

Bill 10 is not a panacea for the problems associated with housing low-income singles. Issues of supply and support, as well as protection, must be addressed now. We can begin by establishing immediate protection for roomers, boarders and lodgers under the Landlord and Tenant Act. This is a foundation on which we must swiftly build supply and support strategies.

Some would delay the extension of the Landlord and Tenant Act to roomers, based on the argument that protection will lead to reduced supply. As I speak, the supply of rooming houses in Toronto is being reduced because of a lack of tenant protection. A vibrant real estate market has contributed to the attractiveness of speculating on rooming house properties. While not abrogating the right of the investor to make a reasonable return on his or her capital, I urge you to remember that housing is a fundamental human requirement, not just a market commodity. Unconscionable speculators derive huge profits by dehousing vulnerable people. We must recognize that speculation occurs at an unacceptable cost, the price of homelessness. Perhaps further examination of a real estate speculation tax should be considered.

Having argued the overwhelming case for the inclusion of roomers, boarders and lodgers under the definition of "tenant" in the Landlord and Tenant Act, let me now reassure the committee that this proposal is entirely feasible. As a member of the board for Cityhome, the city of Toronto's nonprofit housing company, I speak also as a landlord. The Cityhome portfolio of rooming houses presently serves over 300 roomers. For over a decade, Cityhome has recognized roomers as tenants under the Landlord and Tenant Act.

It should be taken into account that Cityhome specifically attempts to

provide homes for the hard to house. Difficulties posed by problematic tenants of Cityhome rooming houses are successfully managed under the provisions of the Landlord and Tenant Act. If it works for Cityhome, I see no reason why it cannot work for all landlords.

The inclusion of roomers, boarders and lodgers in the Landlord and Tenant Act is clearly essential. The experience of Cityhome reveals that security of tenure for roomers is a workable reality. I urge you to expedite the passage of Bill 10.

Mr. Chairman: Thank you very much. Questions from committee members?

Mr. Jackson: Councillor Hall, I appreciate very much receiving your brief. I would like to advise you that we too would like to hear from the Attorney General with respect to the amendments, if any, that he has planned or any larger bill that he has planned, but prior to your arrival, it is my understanding that the chairman announced that he is both unwilling and unable to participate in this bill.

Mr. D. R. Cooke: Not unwilling.

Mr. Chairman: Are you speaking about this chairman?

Mr. Jackson: The Attorney General is either unwilling or unable.

Mr. Chairman: The message I received, which I shared with the committee, simply indicated that neither the Attorney General nor his parliamentary assistant will be available to respond on behalf of the ministry, and further, there has not been a response from the Ministry of Housing regarding the request to have them appear before the committee.

Mr. Jackson: I was referring to yesterday's reference when the chair advised through the clerk that he had been notified formally that they would not be participating in these hearings. Your response, Mr. Chairman, was to a request made by Mr. Charlton and me that the Attorney General be specifically invited to attend. We understand it is his right not to come, and he had communicated that very clearly. We were merely asking out of courtesy if he would reconsider. He has decided not to reconsider. I just wanted the--

1700

Mr. Polsinelli: Maybe you can point out that the parliamentary assistant to the Attorney General who is a regular member of this committee is presently in the Legislature piloting the pay equity bill. I am sure as soon as that is through, he will come back to sit and listen to your arguments, Mr. Jackson.

Mr. Jackson: Some participation would be appreciated.

Alderman Hall, may I ask you specifically about the points that have been raised with respect to the coroners' inquests? There have been several that have been noted in many briefs. There have been others as well that I understand deal not only with the issue of security of tenure but also with the issue of relative risk. I believe one of those inquests had to do with a fire and there may have been noncompliance with maintenance standards. There was also one that I cannot quite recall, but we are trying to determine it, that dealt with the issue of tenants putting other tenants at risk.

Is that an area of concern for you in your capacity as a municipal

alderman? I realize that the previous two issues, of maintenance standards and of tenure, are clearly of concern to you. Is the issue of relative safety and risk for tenants from other tenants a matter of concern to you?

Alderman Hall: It is a matter that is raised by many groups such as the one that was just before me, Ecuhome, and also to some extent by the Supportive Housing Coalition of Metropolitan Toronto. I am aware of that and sit with them on many committees. There are clearly some very special supportive housing situations where that is an issue. That is something you may well want to deal with in the legislation. The Bairstow report has spoken to that. There are many aspects of that problem and I would certainly recognize the legitimacy of some of those concerns.

My concern is that the protection will be delayed in order to address these concerns. One of the things we heard from Ecuhome was that although there were situations where there were problems, they were relatively few. I urge you to proceed with the inclusion and to deal with the exemptions either later--that can be soon--in the regulations or by way of amendment.

Mr. Jackson: Are you familiar with an amendment I have tabled? I referred to it earlier today. It is with respect to exemptions for private home owners who live in their residences. I ask you to expand your thoughts beyond your own ward and to consider housing networks that have been established for ex-psychiatric patients or troubled adolescents in private residences, where the notion that they would fall under the Landlord and Tenant Act would in and of itself constitute sufficient reason for that supply to be further eroded.

We have had considerable documentation on that point. Is that a concern? That is an exemption I clearly intend to table. I tabled it in the House and I will be tabling it here. We have no intention, while we have the bill in front of us, to deal with minor amendments. We are not dealing with a substantive amendment when I suggest to you that someone who lives in his home and is sharing part of his home with someone should be eligible for an exemption. Do you have any thoughts on that exemption?

Alderman Hall: I would see that as an area where an exemption would not be inappropriate. I would want, however, to be very clear around numbers. I would want the numbers to be low enough and it to be clear enough that it was not something that could be used to avoid the impact of the legislation, the sort of situation where you had what was in fact a commercial rooming house where somebody maintained a closet that he claimed was his residence and, therefore, he was living there.

I think that if it was framed in such a way that it could get the bona fide situations where you have someone who has two or three or one or two roomers in their house where they are actually sharing facilities, I would see that as an area where an exemption would be appropriate. However, I would like to see such exemptions quite limited and narrow.

Mr. Jackson: Final question.

Mr. Chairman: A supplementary from Mr. Cooke and then back to Mr. Jackson.

Mr. D. R. Cooke: How does five sound?

Alderman Hall: My friend George Cook is saying he would like speak. Five to me starts getting high.

Mr. D. R. Cooke: Provided the landlord is living in the house, though.

Alderman Hall: I understand that. I think I would feel more comfortable with three. I think if one has five, then one is getting much more into a business situation than if one has under three, where it is a bit of a sideline. You have a couple of empty rooms. I see the other as a less personal, more commercial situation and I think that some of the risk aspect goes with it.

Mr. G. Cook: The city has licensing bylaws for rooming houses which differentiate between owner-occupied and absentee-owned properties. The cutoff, if my recollection is correct, is five. It becomes a commercial enterprise at that point in time.

An extended family is less than five. So that is the kind of limits that we have established over time.

Mr. D. R. Cooke: Does it work?

Mr. G. Cook: It works fairly well. The average rooming house, the average house in Toronto, at least, has 10 or 12 rooms. That is about what you get. There are bigger ones, but that is normal. The problem, of course, is that we are running a housing registry at the moment and we are attempting to have people rent out space in their own private homes. Naturally, we do not want to do anything that would prejudice that effort, because that is helping to solve some of the problem. So, I agree with you that the limit is very important.

Mr. Jackson: Just for purposes of the record, Bill 59 which I tabled, referred to "four tenants", because two tenants might be in one rooming situation. So instead of it flowing from the unit, per se--whatever constitutes a roomer-boarder unit--it flows from the total number who are categorized as roomer-boarders. That is for information.

My final question, Barbara, has to do with respect in your capacity as an alderman.

The city is called upon to provide temporary shelter based on need. You have a variety of alternatives. It may not be true for the city of Toronto, but it is for me in Halton region, where my regional aldermen have expressed a concern. Do you feel there should be an exemption for emergency shelter situations?

If someone's home burns down and they have to be housed, the region picks up some of those costs on a temporary basis--there are several examples of how that works--but would you want the region or the taxpayers who were putting up that accommodation, to be subject to the Landlord and Tenant Act, or should there be an exemption for accommodation established to temporarily shelter persons in need?

Alderman Hall: Hostel situations?

Mr. Jackson: Well, it is difficult, because you are thinking with a Toronto alderman's cap on, and I am thinking--

Alderman Hall: In smaller areas. Safe house, or that sort of situation.

Mr. Jackson: I am not trying to create a bill, just because Toronto has a severe problem, that the rest of Ontario is forced to take the medication. It is important that we consider amendments from communities outside of Toronto that have not necessarily been apprised of our activities sufficiently that they were able to get their point across.

However, other aldermen are faced with coming up with emergency shelter, making those decisions under their community services committee or whatever.

Alderman Hall: Now, I would see emergency shelter as being appropriate for an exemption. I think that if we had an adequate supply, that would probably not be a problem. We have people living for years in emergency shelters these days. If we were to improve the supply situation, then it might be that there was a limit of some time, I would think seven days, 30 days, whatever, depending on the facility. I would see such facilities as being inappropriate for the security of tenure that we are talking about, otherwise.

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Mr. Charlton: Just a couple of questions around what I think you are saying here in the brief. I would just like you to describe things a little further for us, so that it is very clear what is happening out there and the extent to which it is happening. On page 2, you have the list of addresses currently under siege. I take it from the wording of the paragraph that leads up to that list that what is happening here is that people are being moved out, and this accommodation is disappearing for use for other purposes.

Alderman Hall: That is correct.

What is happening with the majority is that they have been sold, and the occupants--tenants, as I would like them to be--have been told by the present owner, perhaps: "It is being sold next month. You will have to be out. Be out or my friends will be by with their truck and baseball bats." Some are situations where somebody has come to the door and said: "It has been sold. I am the new owner. I want you out by Friday." Some have approached legal clinics and received representation. Recently, 433 Ontario Street was in the courts. That was one of them.

There are a number of things happening with them, but, for the most part, they will either be turned into single-family homes or perhaps renovated and maintained as rooms, but at a much higher rent. In some cases, they receive written notice, which would appear to be because the landlord or the owner is not aware of the law. There is a lot of confusion out there.

For the most part, they have changed hands, and some of them are houses that have changed hands three times in the past year. With the way the market has been in Toronto over the past year, there has been an incredible number of places flipping, almost monthly. You see a "For Sale" sign, a "Sold" sticker goes up, and two weeks later there is another "For Sale" sign.

Mr. Charlton: In addition to this question of disappearing housing stock, in terms of rooming houses, to what extent have you observed what we had described to us yesterday, which is the dramatic rent escalation affecting the question of affordability for all these low-income people, who are the predominant stock in the rooming house sector?

Alderman Hall: In some of these houses, people have received 100 per cent and 200 per cent increase notices or have been told, "You can stay past

Friday, but only if you pay double the amount you are paying now." That is a significant proportion.

I know I have been approached by one of the owners of a number of properties who thought I would support converting them into what he described as "very high-class bed-and-breakfast facilities." He said that was a big trend and would be popular in Cabbagetown and that I should be satisfied because that would keep them in the housing market. So there are a number of things happening.

Mr. Charlton: Is the rent increase situation happening fairly frequently out there?

Alderman Hall: Because of the lack of security of tenure, even though the tenants are covered by the rental legislation, it does not mean anything, in a way. If they can throw you out on Friday, you really have to agree to pay the rent increase, even though it may be illegal and you know it is illegal and the landlord knows it is illegal. You may be demanding that kind of process from the curb, because you have been kicked out.

Mr. Chairman: Thank you very much, Ms. Hall and Mr. Cook. We are pleased to see both of you appear before the committee. Of course, your input is going to be of importance to us in determining what to do with Bill 10 or some amended form of that proposed legislation. We thank you for your time and also the amount of background you bring to this issue. It is obvious that you are closely involved with it, and that is very helpful to us as well. Thank you.

On a personal note, it is good to see you again, George.

Mr. G. Cook: Nice to see you, Mr. Chairman.

Mr. Chairman: The next delegation that we have coming before us is the Fair Rental Policy Organization of Ontario, Bill Grenier, chairman; John Bassel, co-chairman; and James Hoffman. We welcome you to this committee and look forward to hearing your presentation. Whenever you are ready, you may introduce yourselves to the members of the committee and proceed with your comments.

FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

Mr. Grenier: My name is Bill Grenier and I am the chairman of the Fair Rental Policy Organization of Ontario. We are essentially a landlord spokesman group. We represent, in large measure, a pretty good cross-section of landlords in Ontario. You have copies of our brief and I would like to read it into the record, if I may.

We have with us John Bassel who, as you pointed out, is co-chairman of our organization, and James Hoffman, who sits on the committee which has to do with roomers, boarders and lodgers.

The Fair Rental Policy Organization of Ontario welcomes the opportunity to appear before this committee and present this brief.

We believe that roomers and boarders--in fact, anyone renting shelter in this province--are entitled to natural rights and protection. We are concerned, however, that whatever measures are proposed as amendments to the Landlord and Tenant Act be equitable in their treatment of both tenants and landlords.

Ontario's current housing problem is not a shortage of legislation but rather a shortage of supply. All political parties in this province must be aware of the effect legislation has had on the entire process of creating supply. To maintain and encourage the expansion of the private sector in the rental housing industry, legislation must protect the rights and privileges of both the tenants and the landlords. Any imbalance is certain to magnify rather than rectify the problems.

We would also like to point out that legislation primarily designed for the conventional rental market is being made to apply to roomers, boarders and lodgers, which is a market sector quite different in its primary characteristics. The conventional rental housing market is distinguished by longevity of tenancies and relative stability of revenues and operations. With roomers, boarders and lodgers, however, the market is one of shorter-term tenancies and higher turnovers, accompanied by increased operating costs and more time-intensive management.

The short-term tenancy business seems especially susceptible to the difficulties experienced by both tenants and landlords, a fact we recognize and accept.

In more specific terms, there are two key areas which give us great concern with the proposed amendments: the matter of meaningful and workable legal definitions and the need for an effective and speedy remedy for intolerable situations. We fear that the current remedies available to both landlords and tenants will be totally ineffective in the short-tenure roomers, boarders and lodgers sector.

Our understanding of the proposed amendments is that their intent is to extend consumer protection to any form of tenant in Ontario. We fear, however, that the language of the amendments is such that the act could possibly be applied to people as widely diverse as casual occupants of hotel rooms and residents of retirement facilities.

The obvious problems arising from such broad definitions could quickly create chaos throughout Ontario and have a negative impact on much-needed supply. We feel there is a very real requirement to define the terms of the legislation to specifically exclude facilities which are not properly within the sphere of this legislation.

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There is a current and pressing need to include in any amendments to the Landlord and Tenant Act some form of quick and effective remedy for intolerable situations, a remedy easily available to both tenants and landlords. The current act provides legal redress, but that process is an exceptionally slow one. The task force on roomers, boarders and lodgers estimates that legal redress for intolerable or high-risk situations takes 41 days on average. While this is a difficult situation for both tenants and landlords in conventional rental housing, it could be especially disastrous in the short-term accommodation field.

Occupants of a rooming house would be at a distinct disadvantage under the current act's provisions, for their need for lodging could well have disappeared before the courts could process any grievance or claim against the landlord. Similarly, a landlord forced to wait one and a half to two months to evict a destructive tenant or to collect overdue rents could either suffer considerable financial damage or be in the position of having to trace a long-gone former tenant.

As we said earlier, the chief difference between conventional rental housing and the roomers, boarders and lodgers sector is the length of occupancy and tenure.

In summary, the Fair Rental Policy Organization of Ontario asks that the committee keep in mind the need for equitable treatment of both tenants and landlords, and the impact of any legislation on much-needed supply.

We ask that terms be narrowly defined to make the proposed amendments as effective as possible.

We ask for specific exclusions for any form of accommodation where services to residents, other than basic shelter and meals, are provided. This would include all suite hotels for transients, retirement and rest home operations, and conventional hotels, etc.

We ask that a form of quick remedy for intolerable situations be included in the amendments and be made available to both tenants and landlords. The time frame for the quick remedy would be no greater than 48 hours.

I would like to ask James Hoffman if he would go on with his portion of the brief. James speaks also as the owner of some facilities for roomers, boarders and lodgers, and he has a wealth of experience.

Mr. Hoffman: As Mr. Grenier mentioned, I did have the pleasure of serving on Minister Curling's advisory committee on roomers, boarders and lodgers. That process involved about six to nine months of activity. As a member of the advisory committee on roomers, boarders and lodgers, I greatly appreciate this opportunity to appear before the committee to discuss certain aspects of the proposed legislation that continue to give me grave concern.

Chief among these is the continuing argument over whether roomers, boarders and lodgers should indeed be protected under the Landlord and Tenant Act or whether their special needs and circumstances would be better served by separate legislation.

Advocates for roomers, and even some landlords' representatives, strongly resist the notion of separate legislation for roomers, boarders and lodgers, even though a strong case can be made favouring separate legislation because of the special needs of this industry. I can tell you, it is a strong belief by this member of the advisory committee on roomers, boarders and lodgers that some form of protection be established for these renters so as not to continue their status as second-class citizens in the rental market.

The argument for the form of legislation seems characterized by two levels of issues, the emotional and political level and the mechanical and technical level.

The emotional and political debate centres on two key points. Roomers and their advocates resist any attempt at separate legislation because they feel that would make roomers, boarders and lodgers a lower class of tenant. They feel any protection likely ensuing from separate legislation would be inferior to that currently offered to tenants in self-contained accommodation. Roomers and their advocates feel separate legislation could lose roomers' basic rights as tenants, which may be theirs under common law, even though that has not been codified in legislation.

On the mechanical and technical level, as Mr. Grenier pointed out, there

are considerable problems with the administration of the Landlord and Tenant Act that are bound to be magnified as it is extended to cover roomers, boarders and lodgers. These problem areas, unless resolved, may make the act impossible to administer equitably for both tenants and landlords.

For example, as members of the advisory committee on roomers, boarders and lodgers, we were given a tremendous amount of documentation concerning the problems specific to that industry, both from a tenant standpoint and a landlord standpoint. There are some examples of cases where the Landlord and Tenant Act is not adequately designed to accommodate some of the problems that might occur in the area.

For example, roomers may, if illegally evicted, be unable to wait out the court process, especially considering normal residency requirements to receive welfare.

I think you will find in the Bairstow report, done in 1986, there was an indication that 30 per cent of renters to this industry are on some form of social assistance.

There is, under the Landlord and Tenant Act, no well-developed mechanism to help illegally evicted roomers to regain possession of their room. The court situation that exists at this time, with overtaxed district and county court judges, may find the courts becoming increasingly enmeshed in a host of small cases to the detriment of their other duties, especially those that meet the basic needs of some of the people who have been evicted.

This committee should be aware of the almost geometric growth in the use of courts to resolve landlord-tenant disputes. Although the tenant population has not increased significantly since 1976, court actions have tripled, and the following table gives an indication of that. In 1976, there were fewer than 7,000 appointments made for resolution in the courts. In the 1984-85 year, there were 22,000.

These are not new problems. The Gerstein report on discharged psychiatric patients found "tenants themselves have found that the protections offered by the present Landlord and Tenant Act are often difficult to enforce." It is questionable whether the act is adequate to deal with the quality of services supplied--everything including meals. Moreover, the act is not appropriate to govern the relationships between the occupants and the providers of, say, group homes.

The very real and basic problem in attempting to apply the Landlord and Tenant Act to roomers, boarders and lodgers is that it allows no quick remedy for those situations that are intolerable or potentially high risk, not just to the landlord but to other tenants.

A submission to the advisory committee by the Attorney General's office highlights this. For example, eviction orders under the Landlord and Tenant Act for those that are deemed to be intolerable-risk situations take an average of 48 days to acquire and execute.

The problems that must be faced by landlord and tenant alike can be both serious and risky. The landlord's problems, however, have been most thoroughly documented in analysis of the rooming-boarding industry by Dale Bairstow. In a survey of landlords to this industry, and specific to this industry, conducted by the Bairstow task force, 1,000 questionnaires were sent out to landlords of roomers, boarders and lodgers and 279 landlords responded. They had to prioritize the major operating problems to this industry.

In the 279 questionnaires, the major problem cited was tenant behaviour. That was prioritized in 100 of the 279. The next one was loss of rent--92 of 279. As you can appreciate, the length of time that it takes to go through the court for a loss of revenue to this industry, when there are perhaps five to 15 units, creates a very severe problem to the small operators. You certainly do not want to have a negative impact on the supply of housing. Alcohol and drug problems were ranked third, with 71 responses out of 279.

From the tenants' point of view, the problem of slow response time for remedies under the Landlord and Tenant Act is magnified by economic, educational and, frequently, health disadvantages. Residents simply do not have the resources to withstand the long delays necessitated by the current Landlord and Tenant Act.

In conclusion, protection for roomers, boarders and lodgers is long overdue. Their status must be equal to that of every other renter in this province, but sufficient safeguards must be included to provide a quick-remedy protection for all intolerable-risk situations.

As a member of the advisory committee, I urge this committee to amend the act to ensure the inclusion of a quick remedy for, again, those intolerable-risk or high-risk situations, both for other tenants and for landlords. The remedy must be available and must be executable within a 48-hour period of the event.

Mr. Chairman: Does that conclude your presentation?

Mr. Grenier: Yes, it does.

1730

Mr. Chairman: Thank you very much. The committee will move on to questions now. Who wishes to go first?

Mr. D. R. Cooke: You have intimidated us, Mr. Chairman.

Mr. Chairman: I have not. It has never been the role of the chairman to attempt to intimidate the committee.

Mr. Jackson: He just does it anyway.

Mr. Chairman: Not at all.

Mr. Charlton: You are saying on one hand, "Yes, protection," and you are saying on the other hand, "We have to have a quicker remedy." Do you have things in mind? We had a similar presentation from another group earlier this afternoon. I guess we would like to know what you see as alternatives to the present remedy mechanism in the act, so we can think about that in our deliberations.

Mr. Grenier: Are you looking for a specific example of what would require a quick remedy?

Mr. Charlton: No. What would be an appropriate mechanism to provide the quick remedy?

Mr. Grenier: Some form in the legislation that says, in effect, that there is a quick remedy, that roomers, boarders, lodgers and people of that

ilk have recourse to an immediate 48-hour turnaround on something that requires response and will not have to wait the full period of time, which can take as much as 41 days.

James, I think you can elaborate on that.

Mr. Hoffman: In our submissions, we are not looking, in the Landlord and Tenant Act, for a distinction of classes between roomers, boarders and lodgers and those conventional tenants who are self-contained.

Mr. Charlton: But you would like something for all situations under the act.

Mr. Hoffman: Exactly. To us, "quick remedy" is--and I am using the expression "intolerable-risk situations"--that the court process be streamlined so that when one of these applications comes in, there is a red-flag process attached to it and within 48 hours some court order or injunction can be issued by the courts.

Mr. Charlton: If we were to consider that kind of special mechanism in an intolerable-risk situation, what would be the appropriate definition for "intolerable risk"?

Mr. Hoffman: There are two distinct words: intolerable situations and risk situations. I think an intolerable situation would be where a tenant is maliciously and knowingly interfering with the enjoyment by other tenants of their premises. Obviously, in the rooming industry, you have facilities which are not self-contained. You have common washrooms. An intolerable situation would be a situation where someone is interfering grossly with the enjoyment of other tenants of the premises. An intolerable situation may be, as well, where malicious physical damage is being done to the premises and will continue to be done as long as that tenant is there.

From a landlord's standpoint as well as a tenant's standpoint, I think an intolerable situation would be if a tenant came home, and because he was a day or two late with his rent, found his front door locked and all his belongings out on the front lawn. We would view that to be an intolerable situation and there should be a very quick remedy for the tenant. Obviously, for that individual to go to court and be faced with 41 days before some judgement is issued--and this individual may very well be on some form of social assistance--he then has no income for that period of time to pay for his meals and other shelter.

Mr. Charlton: The one last point on this is that you are suggesting a quick remedy. I think you are also suggesting that it would have to be in a court. Presumably, we would have to look at setting up a special court to deal with these specific problems.

Mr. Grenier: That does present an additional problem, because you get into definitions where, for example, you treat it differently if you are a lessor in a licensee arrangement, as opposed to a leasehold interest. The law is quite different on those scores. Obviously, we would have to get the lawyers involved in the fine definitions, but I can tell you that, as a landlord group, we know there is quite a distinction between those two situations, one in the hotel situation, for example, and another in the long-term tenancy situation.

There is considerably more to it than meets the eye from the point of view of the type of legislation that is proposed. It is going to have to be considerably more in depth than one might think at first blush.

Mr. Jackson: I would like to pursue Mr. Charlton's question. Mr. Hoffman, you made reference to the fact that, in your capacity as a member of the advisory committee, you had some indication that the concept of intolerable risk was discussed and was considered. Was there an actual recommendation?

Before you answer, I should tell you that we have made a specific request to the Minister of Housing that he provide us with a copy of those recommendations. Essentially, at this point, you have this information, the Liberal members may or may not be privy to this information, but we do not. It may need a clearer explanation from you, given that we have not seen the document and the minister has not been forthcoming with it.

Mr. Hoffman: As a representative of the landlord element on the advisory committee, I can tell you that the landlords were definitely in favour of a quick-remedy provision. Unfortunately, the process is done democratically and references to quicker remedies in those intolerable-type risk situations were not as strongly recommended in the advisory committee report as some of us would have preferred. However, I believe there is recognition for a much quicker process for those situations.

Mr. Jackson: Mr. Grenier, there was reference in day one of the hearings to the context in which Bill 51--and since you are an expert in that area--affects the accommodation of a roomer and boarder, yet the Landlord and Tenant Act does not. For the purposes of assisting those members of the committee who did not involve themselves in Bill 51, could you explain the impact of Bill 51 on a roomer and boarder?

Mr. Grenier: I am always a little leery when someone characterizes me as an expert, because I feel I am being set up. I do not think that is your intent, but let me try my best on this situation.

Bill 51, in its essence, was a bill that was, as we term it, damage control. We were faced with a situation in which its predecessor, Bill 78, would virtually wipe out the industry altogether. Bill 51 mitigated that circumstance somewhat and roomers, boarders and lodgers were excluded from it because at that time we felt it was almost impossible to cover the ground on which roomers, boarders and lodgers found themselves and, as well, cover the other side of the spectrum in which we had long-term tenancy.

There are two distinct areas. It is difficult to cover, in that legislation, those two distinct areas. That does not preclude, however, the idea that anybody who is a tenant should receive less protection and that any landlord should receive less protection as a result. Under Bill 51, it was almost impossible for us to come to grips with this segment of the rental population. This is why it was set aside as a separate committee, to be looked at under separate provisions.

I am sure you are very familiar with the fact that the Landlord and Tenant Act overlaps in some of these areas within the provisions of Bill 51. So we had a situation where, on the one hand, a landlord attempts to live by the provisions of one bill and runs into conflict with another. By the same token, in fairness, a tenant seeking protection under one loses it under the other. I guess that is why we are here today.

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I would have to add, as a strong advocate of the removal of rent controls, we would not have to be here at all if we did not have rent controls.

Mr. Chairman: That is a story for another day.

Mr. Jackson: I am not even going to nibble on that one. If I could pursue that line of questioning, you talk about moving towards the distinction being long-term tenancy, but under the inclusion of roomers and boarders within the Landlord and Tenant Act, there is an implied extension of tenure by virtue of the requirement of two months' notice.

Now, if I read your brief correctly, you are not fighting that context. You are simply stating that where there are cases of intolerable risk, there should be an opportunity for a quick remedy for the security of the tenant.

Mr. Grenier: I would like to have Mr. Hoffman answer that; he has worked on that sector of it.

Mr. Hoffman: It seems as if the suppliers of rental residential property are always coming from a position of damage control. This appears to be another one of those situations for an element of our industry. There is no doubt that the situations that may have a higher rate of occurrence in the roomer and boarder lodgers were not a consideration in the Landlord and Tenant Act when it came out. Our preference, as you have heard, is to bring out legislation that accommodates that industry.

Realizing and recognizing that two bills have been introduced for inclusion of roomers, boarders and lodgers, our industry perceives this again as damage control. I guess we are prioritizing the important issues, and a quick remedy and some of the exclusionary provisions are the most important to us. Without a doubt, you could go through the Landlord and Tenant Act clause by clause and find a situation where the Landlord and Tenant Act just does not accommodate some of those problem situations that may have a high rate of occurrence in the roomers, boarders and lodgers.

Mr. Grenier: Mr. Jackson, if I might, Mr. Bassel just pointed out that I made a mistake when I said we did not include the boarders and roomers--I was meaning the Landlord and Tenant Act--when we were addressing Bill 51. I am sorry I gave you the wrong impression.

Mr. Bassel: I just want to add something to why we need quick remedy. To give you a little background, and I am sure you have heard this before, when a tenancy application comes in on a self-contained apartment unit, one receives an offer to lease; there is an awful lot of information attached to that, and there is the ability to check out background, find out where the person works, where he lived before, how long he lived there. There is a certain amount of comfort that can be taken in most cases from that. With short-term tenancies, sometimes that is not as possible to do. These are some of the reasons for quick remedy.

When I was on the Rent Review Advisory Committee, one of the things I did, along with some tenant representatives, was to go on a tour of some roominghouses in the Sherbourne-Parliament-Gerrard area. I could see lack of justice for both landlord and tenant in those instances. One of the things I would be greatly concerned about would be where a roomer, boarder or lodger is a tenant in a private home where there are children. There should be a way that the health, safety and welfare of those children be protected in certain circumstances, where there is cause.

The other thing I heard the lady who spoke just before us say had to do with the use of houses on a short-term basis as roominghouses, pending

redevelopment. One of the things that I worry about is, if legislation is passed which makes that sort of activity unacceptable to an owner, you might find that type of accommodation will disappear completely from the market instead of maybe being there for one, two, three or four years, pending the redevelopment process.

As far as I am concerned, half a loaf is better than none in these cases, but a developer might fear that he may never get to develop the property. Therefore, he would buy it and leave it vacant rather than provide a service which tends to reduce the cost of the land, possibly making the accommodation that is ultimately going to be built there more affordable.

On the subject of the rights of roomers, boarders and lodgers, I think they are protected under Bill 51 to whatever extent they can avail themselves of it.

Mr. Jackson: In final response, I believe that what you have just indicated is that you support the amendment I have proposed, which is an exemption for in situ owners providing accommodation for four or fewer tenants.

Mr. Bassel: Most definitely. I think I have to say that if that amendment were not included, you would see a great falloff in the amount of accommodation that is available for this purpose at this time.

Mr. Jackson: Thank you very much.

Mr. Chairman: Thank you. I bring to the members' attention that there is a voting bell, so we will have to conclude the committee now and ask for a motion for adjournment. Before we do that, I would like to thank the delegation for coming before us and for its assistance on this bill.

There is a motion to adjourn from Mr. Polsinelli, and that is carried.

The committee adjourned at 5:46 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
LANDLORD AND TENANT AMENDMENT ACT
MONDAY, JUNE 15, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Also taking part:
Marland, M. (Mississauga South PC)

Clerk: Mellor, L.

Staff:
Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Good Shepherd Refuge:
Mumm, Brother R., Social Action Director

From the Toronto Christian Resource Centre:
Hili, C., Associate Director

From the Toronto Real Estate Board:
Brooks, K., Vice-Chairman, Political Affairs Committee

From the Metro Tenants Legal Services:
Blazer, M., Director of Law Reform
Robinson, L., Community Legal Worker; Representative, Tenant Advocacy Group

From the Ontario Long Term Residential Care Association:
Winchell, R., Executive Director
Binions, B., Member, Senior Citizens' Affairs, Rest Home Committee Member; JBG Management
Sheahan, G., Member; Equion Securities

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 15, 1987

The committee met at 3:35 p.m. in room 228.

ORGANIZATION

Mr. Chairman: Members of the committee, I would like to get under way, if I could have your attention for a moment. I have received a letter from the Ontario Federation of Labour addressed to me. It is with respect to Bill 42.

"The Ontario Federation of Labour is very concerned that Bill 42 as now drafted would affect adversely the ability of trade union representatives to appear before labour boards and similar bodies without having undergone a registration procedure as 'paralegal agents.'

"We are therefore requesting an opportunity to appear before the standing committee."

It is signed by the legislative director, John O'Grady.

It would be my recommendation to the members of the committee that we attempt to accommodate the Ontario Federation of Labour on Monday, June 22. You do not have this agenda before you. Maybe you do. I believe it was just circulated. You will see that we have hearings at 3:30 p.m., 4:15 p.m. and then it would be my recommendation to the committee that we fit the Ontario Federation of Labour in that day.

Mr. D. R. Cooke: Five o'clock.

Mr. Chairman: The time would be at 5 o'clock rather than the continuation of clause-by-clause at that time.

Effectively, what we would do is set back clause-by-clause discussion until we complete the hearing for the OFL. If that meets with your approval, I will proceed on that basis.

Mr. D. R. Cooke: So move.

Mr. Chairman: Moved by Mr. Cooke and I gather that is agreed to by the nods I see around the table.

Mr. D. R. Cooke: Except for the New Democratic Party. They seem to be opposed.

Mr. Chairman: Let the record show that the nods were most vigorous from the NDP side in terms of approving that change in the agenda.

LANDLORD AND TENANT AMENDMENT ACT
(continued)

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

Mr. Chairman: I would like to go now to the routine proceedings for this committee for Monday, starting with the 3:30 delegation. I would like to call forward the representatives from the Good Shepherd Refuge, Brother Rudy Mumm, and the Toronto Christian Resource Centre, Mr. Carmel Hili. I believe that is the pronunciation. If I have it wrong, you can correct it. These two organizations are going to be sharing their time, as I understand it, so they will be given the usual half hour. I thank you for coming before us and welcome you to our committee's deliberations.

GOOD SHEPHERD REFUGE
AND TORONTO CHRISTIAN RESOURCE CENTRE

Brother Mumm: Good afternoon. It is a pleasure to be with the committee this afternoon. My name is Rudy Mumm from the Good Shepherd Refuge.

The steering committee on the administration of justice has already heard numerous deputants present clear and cogent arguments for the inclusion of roomers and boarders under the Landlord and Tenant Act as proposed by Bill 10. My own intention this afternoon is to address two particular issues.

First, from the viewpoint of an emergency hostel for men here in Toronto, the fact that lack of clear security of tenure for roomers and boarders in Ontario contributes directly to the increasing number of homeless in our midst. Second, the Good Shepherd Refuge collaborates closely with the city of Toronto Non-profit Housing Corp. and with the Christian Resource Centre--Self-Help Inc. in providing long-term housing, recognizing roomers as tenants under the Landlord and Tenant Act, which I might say it is possible to do. I do not think it is a great surprise to anyone in this panel.

Hostels and emergency shelters are the last resort before life in the streets. The cycle is endless and devastating, from street life and hostels to a rooming house and back to the streets.

1540

Because roomers and boarders in Ontario are systematically denied security of tenure, the landlord may evict at will for no legitimate reason, and I note usually for reasons of speculation. The roomer is forced to uproot his or her life and find shelter immediately for that night. Due both to a shortage of affordable housing and to financial restrictions, the roomer has two options, either to live in the streets or to find a bed in a hostel.

If the roomer goes to a hostel, she or he faces restricted length of stay, overcrowding, no access to stable employment or income, restricted hours of access to the hostel and several other problems. These factors all contribute to serious mental and physical health problems for the homeless persons. Here I refer you to the Toronto Union of Unemployed Workers' March 1987 Report of the Inquiry into the Effects of Homelessness on Health for an in-depth summary of their findings. I did not make copies for the committee but I have a copy here if they are needed.

Hostel dwellers who are fortunate may eventually manage to extricate themselves from the hostel-hopping merry-go-round and find a room. However,

the roomer still lives under constant fear, stress and insecurity, facing the constant threat of eviction in the ongoing cycle of life in a rooming house to life on the streets and life in hostels.

Rooming house landlords who have adopted the Landlord and Tenant Act have had very positive results, as I know personally from our collaboration with them, namely with the city of Toronto Non-Profit Housing Corp. and with the Christian Resource Centre. It is time to end the discrimination against citizens of Ontario on the basis of economic status. I join the numerous voices calling on the government of Ontario to support Bill 10 and ensure its immediate passage into law.

At this point, I would like to introduce Mr. Carmel Hili from the Toronto Christian Resource Centre, with whom we at the Good Shepherd Refuge collaborate very closely.

Mr. Hili: Thank you very much for the opportunity to make this statement.

The Toronto Christian Resource Centre has worked with roomers for the last 20 twenty years. It worked in all the rooming houses in the Don district area when it was still dotted with them. It worked with roomers south of Wellesley East and east of Church Street on all kinds of personal problems, whether it was a landlord-tenant conflict or a health or income difficulty.

Over the years, the centre has sought to stem the loss of these residences for low-income singles by getting into the management of these houses itself and by working with residents to build a sense of pride and ownership. Even at that early state of rooming house erosion, roomers were only one step away from living on the streets. Some 7,000 units have been lost with conversion to commercial space and gentrification of the many rooming houses. We at the centre have watched whole communities uprooted. These people had no economic power with which to defend themselves.

This haemorrhaging of affordable housing goes on today as well largely because of the lack of legal protection roomers suffer from. In the eyes of the Landlord and Tenant Act, roomers are clearly second-class citizens. Many pay their rents and those who work pay their taxes, yet the law ignores them. Many pay the price for this with homelessness. In our civilized society, this is not acceptable.

In the past, roomers were stereotyped as people with a label, whether it was mental illness, addiction or a jail record. In reality, of course, roomers include many working people and many young men and women working part-time or studying at college. There are also the older men who have stayed one step ahead of street life, who manage on their own and who deserve the protection for their housing that more affluent tenants enjoy.

The Toronto Christian Resource Centre categorically stands for the inclusion of roomers, boarders and lodgers under the Landlord and Tenant Act. Many good reasons have already been forwarded as to why this should be so and I do not intend to repeat them. However, I want to emphasize that security of a home is a basic human right and this basic right should not be inherent only in the goodwill of people. It should be founded in the law, rooted there, as are other basic human rights. We at the centre maintain that the Landlord and Tenant Act, as it is now, discriminates against roomers, boarders and lodgers.

One of the reasons given by some landlords against protecting roomers is

-that the process of evicting takes a long time. In the meantime, it is alleged, the culprit tenant will be causing all kinds of mischief. The length of judicial process is long also for tenants of apartment buildings, yet we never think of depriving these tenants of their right as tenants under the Landlord and Tenant Act. It is up to the courts and the Attorney General to provide the resources necessary for speedy resolution of legal disputes. Roomers should not be deprived of their legal rights because the courts are backlogged.

Whatever mischief an evicted tenant can cause depends, to our minds, on the tolerance of other residents; it can be contained by a blend of common sense and the protection of the police. Does this kind of mischief not go on in apartment buildings too? We at the centre know of all kinds of stories. That is exactly why the Landlord and Tenant Act is so indispensable: It protects tenants against a bad landlord as well as against a bad co-tenant.

For the last 12 years, the Toronto Christian Resource Centre has not only operated its rooming houses under the Landlord and Tenant Act but has also encouraged residents to manage and control their residences co-operatively. Twelve years ago, unknown to many, the centre pioneered residents-controlled rooming houses where decisions about every aspect of life within the house were determined by the roomers and where staff played only a supportive and assisting role. Whenever an eviction had to be enforced, it was done according to the act, witnessing to the fact that rooming houses can work well under the Landlord and Tenant Act and can remedy conflictual situations.

In conclusion, we observe that Bill 10 for the inclusion of roomers, boarders and lodgers under the Landlord and Tenant Act is sponsored by a member of the New Democratic Party. The Progressive Conservative Housing critic has gone on record as favouring the protection of roomers, boarders and lodgers under the Landlord and Tenant Act.

The Minister of Housing (Mr. Curling) said in the Legislature on April 29, 1987, that the government stated "emphatically in the throne speech...that it"--roomers, boarders and lodgers--"would be brought under the Landlord and Tenant Act." The Attorney General (Mr. Scott), in his most recent newsletter to his constituents stated, "We have also moved to give roomers, boarders and lodgers legal protection."

If all parties agree on the substance of protection, why is there such foot-dragging? The worst thing that can happen at the moment, we believe, is the failure to enact such a bill before the next election. While we fiddle around, people may be losing, and are losing, their homes.

Mr. D. R. Cooke: These were both good, short, succinct briefs. In answer to your question, I think we would all blame the other parties and that would clear that question up.

Mr. Reville: Could we vote on that?

Mr. D. R. Cooke: On the first brief, Brother Mumm, you have indicated, if I understand you, that the Good Shepherd Refuge actually carries out its mandate as if the roomers were its tenants and gives them the rights under the Landlord and Tenant Act?

Brother Mumm: The Good Shepherd Refuge is a hostel. As with all other hostels, we do not exercise the Landlord and Tenant Act in the hostel because it is an emergency shelter, obviously. My reference to the Landlord

and Tenant Act was that we work with rooming houses that are administered by Cityhome and the Christian Resource Centre and that in our work with them we are operating together under the Landlord and Tenant Act, but we ourselves are not landlords.

1550

Mr. D. R. Cooke: All right. You are not suggesting then that, somehow or other the Landlord and Tenant Act should be applied to your hostel as it stands now or that you could administer both sides of--

Brother Mumm: No, I am speaking of my experience as a hostel person working with roomers in the community.

Mr. D. R. Cooke: We have had some representation from some groups that look after socially disadvantaged people to the effect that they wish to be exempted from any amendment in order to carry on their own structure, which would permit them to discipline roomers, by eviction if necessary. I do not see any of that thought process in either of your briefs.

Brother Mumm: No.

Mr. D. R. Cooke: And you do not see that this would be necessary at all, in either case?

Mr. Hili: We would like to point out that the Christian Resource Centre, as mentioned in the brief, has operated rooming houses for 12 years now and has always operated them under the Landlord and Tenant Act. Whenever there was an eviction to be enforced, it was enforced under the Landlord and Tenant Act. Rooming houses can work.

Brother Mumm: I would say the other point is that group homes are already exempt from the Landlord and Tenant Act, so that provides a forum for certain kinds of housing. We do not support that, no.

Mr. D. R. Cooke: You do not particularly want your hostels exempted and you do not support that for group homes?

Brother Mumm: Hostels, by nature, are not long-term housing. They end up being that because of the lack of affordable housing. But we do not want it for the hostels, definitely not. It is just contradictory to what hostels are supposed to be.

Mr. D. R. Cooke: I would have thought so. If somebody was in there on a very short-term basis, you would not want to be having to give him 90 days' notice.

Brother Mumm: The problem is that people are already hostel-hopping, as referred to in the document, because there is no housing to go to, but it would be ludicrous to try to confuse the two issues.

Mr. Reville: This is a good opportunity to congratulate you both on the work you do in downtown Toronto.

I want to carry along a little further with the line of questioning Mr. Cooke began. I will probably direct this to you, Mr. Hili, because of the long experience you have had as a street worker with the Christian Resource Centre

and a ministry primarily to roomers. Could you describe for the committee any of the characteristics of the people who live in your rooming houses?

Mr. Hili: In our first effort some 12 years ago, when we decided to move into the rooming houses by way of trying to help preserve them, preserve the stock, we found that we really should accept roomers on their own terms. If roomers had a drinking problem, then we had to accept them as they were and deal with them as honourable citizens and human beings. The idea was to assist them within their housing, to help manage their household as a group. We were assuming that they wanted to be masters in their own household and that they were able to manage their household competently, with some assistance from us. We worked with people who had some difficulties in their lifestyle.

The rooming house we worked with worked relatively well. They were able to manage their housing well, with assistance from staff, and staff were very eager not to impose from above and not to control but to assist them in coming to joint decisions as a group, as a type of family.

The roomers are, as was mentioned already, not just people who may have a drinking problem. We find the whole spectrum of people as you would find in an apartment building: people who are working and not earning a lot of money, so they cannot afford to live in an apartment building. You can find young students, young people who are going to college, and people who are unemployed and looking for work. Within our housing, we find we have a whole gamut of residents.

Mr. Reville: Is it not the case that one of the rooming houses you sponsored and set up was composed of roomers all of whom had a drinking problem?

Mr. Hili: The first house we went into was a wet house, as we call it, where people living in it have a drinking problem.

Mr. Reville: Notwithstanding that they had drinking problems, you thought it was appropriate they be covered, as far as you were concerned, by the Landlord and Tenant Act.

Mr. Hili: Correct.

Mr. Reville: Were you able to resolve any of the disputes that occurred in the house?

Mr. Hili: The house--it is still in existence--always operated under the Landlord and Tenant Act, so when difficulties arose they were always resolved under the Landlord and Tenant Act. If there was a process of an eviction notice started, usually the other residents took part in the process. Then, after a period of time, the case went to court and it was decided there.

Mr. Reville: It may be worth noting, for the benefit of the committee, that the house in question is in the heart of the very highly gentrified part of the city of Toronto. In fact, it met with extreme opposition when it was first opened. How would you rate community acceptance of the house now?

Mr. Hili: When the community heard about a rooming house opening, they organized themselves and went down to city hall to oppose it. They spoke strongly against it. However, the house was given by Cityhome to the Toronto

Christian Resource Centre to operate as a rooming house, as a wet house, as well.

Within a year or so, the people within the house had the residents, the owners, on the street change their minds entirely. When the residents' association meetings take place now they bring out this rooming house as an example of what a rooming house can be. Some of the most vociferous opponents of it have become very great friends with the residents. Now the families next door trust the residents so much--this might sound funny--that when they go away they give the key to a couple of the residents to keep an eye on the house and to go in to feed the dog and water the plants.

For us, it is certainly an example of a rooming house where there are all kinds of problems, but where the rooming house is able to operate even under the Landlord and Tenant Act. It is able to operate very well.

Mr. Chairman: Thank you. Mr. Cooke, do you have a brief supplementary? I have to go to--

Mr. D. R. Cooke: What you are saying is exciting. The Landlord and Tenant Act is extremely adversarial, though. I just cannot imagine most landlords and tenants wanting to live in that sort of a scene. This is why I am not sure why you are saying you would want the Landlord and Tenant Act to apply to that kind of a living arrangement, where you make decisions together, which are landlord decisions as well as tenant decisions.

Mr. Hili: The resident control of the house is something that comes out of the way we want to operate our rooming houses. We do not want to be a landlord who imposes from above. We believe people have a lot of common sense and they want to be masters within their own household. We want to encourage this. When there is a difficulty being created by one of the residents, it is not just a question of the landlord wanting the resident out but it is a question of all the other residents as well participating in that process.

1600

Mr. D. R. Cooke: Presumably the landlord would never use those powers to try to get that resident out if the other residents did not agree?

Mr. Hili: It is a very difficult situation to imagine where one person is creating a problem and the others are happy to live with him. It never has happened that the residents do not want to issue this person out of the rooming house.

Brother Mumm: Mr. Cooke, you described the Landlord and Tenant Act as adversarial and I am not sure that I would agree. To me, to us, the Landlord and Tenant Act is there as a protective measure to guarantee the rights and responsibilities of both the landlord and the tenant, the landlord and the roomer. I think problems are being created when there is no clear legislative process for roomers, and for me therefore, it would not be adversarial but a helpful and necessary agent or step to protect those rights.

Mr. Chairman: I have to move along to Mrs. Marland. Is it a brief one?

Mr. Partington: A very brief question.

Mr. Chairman: All right. I will have you follow Mrs. Marland, who has been waiting patiently for her turn.

Mrs. Marland: I wonder if either of the deputants has any idea what Mr. Scott meant in his most recent newsletter which they refer to where he says, "We have also moved to give roomers, boarders and lodgers legal protection." Do you know specifically what he is referring to in that statement?

Mr. Hili: Mr. Scott has been approached many times about inclusion of roomers, boarders and lodgers. We have it from him, in a private capacity I guess, that they will be protected, that they will be included. I take it that what he means is they will be included under the Landlord and Tenant Act. That is how I read it, that they will receive protection under the Landlord and Tenant Act.

Mrs. Marland: You say he has given you that assurance privately. In writing?

Mr. Reville: Publicly; several times.

Mrs. Marland: I am just using this gentleman's word. He said privately, I thought.

Mr. Hili: That is right. In conversations with him, that he will push for it if we tell him to do so.

Mr. Reville: I have it highlighted if you would like to look at it.

Mrs. Marland: Yes, I would. Is there anything in the existing Landlord and Tenant Act that you would like to see amended to protect the interests of the people you are representing? You have referred to the fact that the process is very long, obviously, if there is an appeal under the act. Is there anything else other than expeditiously to deal with the process?

Brother Mumm: I would say that the most important thing is to introduce it and pass it immediately because of the number of roomers who are losing their homes. At this point, I would just include roomers and boarders in the act as the act is. My understanding is that there are problems with the Landlord and Tenant Act anyway, but that can be revised or reviewed at a later date. The important thing is to include roomers and borders now. As for length of time, there is some confusion there. I understand that last week Mr. Grenier made a presentation saying that the minimum number of days was 41 or 42 days, but according to the Bairstow report, Mr. Bairstow has stated that the minimum number of days for eviction, for instance, is 22 days. I do not think the question of time is a major problem at this point. The urgency is for roomers and borders to be included before the number of homeless just rises too much.

Mr. Partington: Is it your understanding that people who rent rooms on a weekly basis in a hotel would not be subject to the Landlord and Tenant Act, that they would not come under the Landlord and Tenant Act as a result of this amendment?

Brother Mumm: Anyone who is under the Innkeepers Act, and I believe hotels are under the Innkeepers Act, would not be subject to the Landlord and Tenant Act.

Mr. Chairman: Thank you very much, Mr. Mumm and Mr. Hili. We appreciate your presentation and your patience in answering our questions. We will be dealing further with this legislation, as you are aware, and we will try to take your comments to heart with respect to moving expeditiously with the bill. We will certainly, from a committee's standpoint, co-operate to the extent that we can.

The next delegation, members of the committee, is the Toronto Real Estate Board. We have Mr. Munaretto, who is the research co-ordinator, and Keith Brooks, chairman of the public awareness projects subcommittee, who I believe are with us today or were scheduled to be with us. I would ask them to come forward now, if they would, please.

I think Mr. Brooks is here. Mr. Munaretto is not going to be here?

Mr. Brooks: Mr. Munaretto is not here, sir.

Mr. Chairman: All right. Ms. Black, you can come forward and take a seat with Mr. Brooks, if you would like. We welcome you to the committee deliberations and whenever you wish, you can get started with your presentation.

TORONTO REAL ESTATE BOARD

Mr. Brooks: My name is Keith Brooks and I am vice-chairman of the Toronto Real Estate Board political affairs committee. I am here to share with you some concerns that we have about the scope of Bill 10 and the--possibly unintended--negative impact it will have on the provision of affordable housing in Ontario.

By now, we are all likely familiar with the strong potential for meeting some of our housing needs through what has been referred to as "intensification." With the considerable drop in our average household size during the past 30 years, many of today's homes and older urban neighbourhoods are occupied by singles, couples and smaller families.

Intensification is the process whereby the number of occupants of our housing stock and neighbourhoods is increased through home-sharing, conversions and infill forms of development.

In 1983, a major study for the Association of Municipalities of Ontario and the Ministry of Housing concluded that over 500,000 homes in Ontario have the space to accommodate an accessory apartment or to rent out a floor of the house. The study also surveyed the owners of these housing units. Some 12 per cent stated that they would strongly consider renting out a room in their houses or converting part of their houses into apartments.

That would create more than 60,000 rooms and apartments, with no government subsidy. I might add, however, that the study also pointed out some of the legislative impediments constraining intensification activity. Among these was the Landlord and Tenant Act.

The same concerns were voiced more recently in Living Room II, a comprehensive housing policy review by the city of Toronto. "Small landlords--the owners of small buildings and home owners renting out space within their homes--are the source of much of our rental stock...encouraging small landlords to continue to offer space for rent must be, in the opinion of

-the committee, a major objective if the stock of low-priced rental units is to be protected and increased."

The city's report focused on inappropriate legislation as one of the key problem areas in reaching this goal.

"Small landlords, even with the experience and formal training that many have, do not possess the resources to deal with very complex legislation and cumbersome procedures controlling landlord and tenant obligations, disputes and rent increases. Perhaps more important, small landlords do not have the same capacity as their large-scale colleagues to absorb the costs associated with some tenancies.

1610

"These kinds of problems are exaggerated for the home owner renting out or contemplating renting out space in his or her home. These people usually lack any formal management training, have no experience with legal routines, and have no alternative rental income to sustain them while dealing with a troublesome tenant. A frequent complaint raised with staff from the city's own housing registry is the perceived bias towards tenants in landlord/tenant legislation and its enforcement. Some owners have definitely decided to stop renting a flat or room on this account."

These last few comments are supported by the city staff operating a housing registry that is actively involved in bringing together roomers and home owners offering space. Given their extensive experience, we should listen to their concerns. The Bairstow task force also raised these issues and made recommendations based upon extensive research, consultation and analysis. It is one thing to try to deal with the needs of large, rooming house occupants. It is something totally different to draw in all roomers, boarders and lodgers into your actions.

Consider the widow in East York who might want to share her home with another tenant, or the middle-aged couple in North York whose children have grown up and left home and they are thinking about renting out their basement, or the young couple in Scarborough who have read about the housing needs for students attending Centennial College and Seneca College.

If these people are considering taking in a boarder but are a little hesitant today, then what will they be like tomorrow if Bill 10 is enacted? At the very least, Bill 59 sponsored by Mr. Jackson should be adopted simultaneously to ensure that home owners will continue to provide much needed affordable rental accommodation. However, the Toronto Real Estate Board believes that the other exemptions raised in the Bairstow report should also be considered before implementing the legislation. For example, should you as legislators create an overlap, duplication and potential conflict between the Landlord and Tenant Act and the various acts governing residents who are receiving care?

Also, consideration might be given to defining boarders to ensure that the provisions of the Landlord and Tenant Act are applied to the group targeted for. For example, is a nanny considered a boarder even though she may not pay to live with a family? Is there a need to amend the act to define boarders, as well as tenants, on the basis of payment of rent?

In conclusion, we believe that home owners should not be tied by the restrictions of the Landlord and Tenant Act. We would urge the committee to

-proceed cautiously to ensure the legislation addresses our concerns as well as those raised in the Bairstow report.

Mr. Chairman: Questions from members of the committee? There appear to be none. Perhaps I can ask one quick question. Is the position that you put before us one that has been discussed or debated with the full board or is it a position that has come out of the research division of the board?

Mr. Brooks: It is a position endorsed by the directors of the political affairs committee.

Mr. Chairman: So it has not been put before the entire board. I only ask this question to see if they are aware of the position you are discussing with us today or if it is an official position.

Mr. Brooks: I do not know how else to answer your question.

Mr. Chairman: You said it was the public affairs committee that discussed it, but not the board as a whole. Am I to understand you correctly?

Mr. Brooks: The activities of the political affairs committee are well known to the directors of the board. There is nothing the political affairs committee does that does not have the full endorsement of the directors. I really do not know how else to answer your question.

Mr. Chairman: You just answered it. That is fine.

Mr. Partington: Just one question: Are you suggesting in your brief that the Landlord and Tenant Act perhaps exempt also one or two apartment building or apartment units in a building?

Mr. Brooks: I did not say that.

Mr. Partington: You did not say that. I thought I read that in the brief somewhere.

Mr. Brooks: Our main concern is the general perception in the marketplace right now that home owners are apprehensive about renting to strangers--roomers and boarders--when they are sometimes sharing kitchen and toilet facilities. Because of this apprehension, I think the worst legislation could do would be to make the situation worse by saying, in effect, it does not matter and you can rent to anybody, but they are fully protected under the Landlord and Tenant Act.

I think the consequences would be calamitous in the case of some home owners who are stuck with tenants they cannot get out. That could be a very sorry state of affairs and I think if you do not protect the home owner and allow him, because of incompatibility, to evict tenants who are incompatible, then not only will you not get any more home owners willing to rent but also you are going to have a drying up of the supply that is there now.

You can go back to rent control in 1975. That was supposed to solve a lot of things but we have had a zero vacancy rate ever since and we will continue to have it.

Mr. Partington: I guess the reason I asked the question was that I know your statement with respect to roomers, boarders and lodgers, but on page 2, I noted your comment that "12 per cent would...consider renting out a room

in their houses or converting part of their houses into apartments." That is why I asked you if it was perhaps a thought that maybe the Landlord and Tenant Act should also exempt a house that contains one apartment in addition to the main living space.

Mr. Brooks: I was quoting from a report.

Mr. Partington: That was an aside and is certainly not the main purpose of this meeting.

Mr. Brooks: Our main thrust is to ask the committee, if you are going to go through with this legislation, for goodness' sake, do not saddle private home owners with roomers they cannot get rid of. Otherwise, you will just dry up the supply. It is tough enough now. The home owners would need protection. That is all you need to dry up the supply quickly and I am sure--I hope--that is not what you want to do.

Mr. Chairman: Thank you very much for your presentation before the committee. We appreciate your time in coming before us.

Members of the committee, may I recommend that we about take a 10-minute break because we are a little bit ahead of time. We will start about 4:30 p.m. with the next delegation.

The committee recessed at 4:17 p.m.

1634

Mr. Chairman: I recognize a quorum, so we can get under way with the scheduled hearings for the 4:30 session. We have before us Metro Tenants Legal Services. Perhaps before you begin your presentation, you could introduce yourselves so that we know who it is we have before us. On behalf of the committee, let me welcome you to our deliberations. We look forward to hearing your comments with respect to Bill 10.

METRO TENANTS LEGAL SERVICES
AND THE TENANT ADVOCACY GROUP

Mr. Blazer: My name is Michael Blazer. I am director of law reform at Metro Tenants Legal Services. With me is Ms. Leslie Robinson who is appearing as a representative of the Tenant Advocacy Group, which is a successor to the tenant umbrella group that was formed to make submissions to the Thom inquiry some years ago.

There were several tenant groups we were in contact with that were not able to get time slots to appear before this committee, so we have sort of turned this into a joint presentation. We are really here on behalf of the Tenant Advocacy Group as well as about a dozen Metro area legal community clinics, as well on behalf of the Federation of Metro Tenants' Associations.

I want to make a few introductory remarks. I was a member of the Advisory Committee on Roomers, Boarders and Lodgers to the Minister of Housing (Mr. Curling) on the question of roomers and borders. That committee reported to the minister on March 20, 1987. The committee was made up of tenants, landlords and an equal number of municipal representatives as well. I am sure this committee is aware, but I should probably say for the record, that the

-advisory committee was unanimous in its recommendation that roomers and borders be covered by the Landlord and Tenant Act.

Our recommendations also advocated what you might call fine-tuning to the act; for example, to recognize the fact that in this segment of the market not short-term tenancies, but short-period tenancies were more commonplace. Weekly tenancies would be more commonly found than is the case in the traditional apartment market. We made some recommendations with respect to notice periods, security deposits and things such as that which we felt would be called for with the extension of coverage of the act.

I am speaking really not on behalf of that advisory committee today but on behalf of myself as a member of that advisory committee. I checked with the chairman of the committee this morning and as of 11 o'clock this morning we had still not heard anything back from the minister concerning our report except for a letter about a month ago saying that he would meet with us at some time in the future.

As far as we know, our report has not been released or made public. I personally feel that enough time has passed and I have brought a copy of the report for the committee's perusal if the committee would like to have it filed at this time. I understand a previous witness may have already made a copy of the report available.

Mr. Chairman: Apparently it has not been distributed to members but we do have the report. Are we sure it is the same one?

Mr. Blazer: Is it dated March 20, 1987?

Mr. Chairman: No.

Interjection: I gave one to the committee last Tuesday.

Mr. Blazer: Perhaps I could file this with you. It is beyond our photocopier's capability to make massive copies today.

Before I introduce Ms. Robinson, who is going to present the brief on behalf of the groups I mentioned, I have had the opportunity to look at a few of the briefs the committee received last week. We have not been able to keep totally on top of all the submissions you have been hearing.

Mr. Chairman: Excuse me, before you proceed, just so that we are all on the same wave length, the report has in fact been distributed and it is item 8 in the material you have already had circulated to you. That is the brief you are referring to. I wanted to make sure we had the right one and the same one and apparently it is.

Mr. Blazer: That is the report to the Minister of Housing of the Advisory Committee on Roomers, Boarders and Lodgers.

Rather than take up the committee's time going through the details of the recommendations contained in that report, I will request that the committee have a look at the last section of the report which deals with essentially what Bill 10 is concerned with, the extension of security of tenure. The other parts of the report deal with support services and questions of supply that are fairly involved questions. Of course, they are all inter-related but I think the section on security tenure stands on its own.

Rather than go through it, I would be happy to answer any questions or provide any clarification if the members of the committee have any questions arising out of that report. I should say that there probably could have been more explanation in that section of the report but the minister was anxious that we make the report and we did not have all the time in the world, I guess you could say, to expand on the ideas contained in it.

1640

I want to make a brief comment about the submission you received from the Fair Rental Policy Organization of Ontario. I am gratified to see that they basically endorse the intent behind Bill 10. They had a representative on the advisory committee, so I guess I am not completely surprised at that. The key point in their submission to you seems to be that it is a different kind of market you are dealing with. They feel the distinguishing feature is the high turnover, the shorter-term tenancies.

The obvious comment I would make in response to that is if that is the tendency in this segment of the market, the first explanation one would look to would be the fact that roomers have no security of tenure. I have been a case worker in the area of landlord and tenant law for seven years and I have some experience with rooming houses. In my view, the short-term nature of the tenancies or occupancies in that sector is directly attributable to the lack of statutory protection.

I have had numerous cases where a building full of roomers is forced to vacate with no reason given by the owner, often when the building is being sold. I have seen that happen only to be followed by the rooms then rented out again as rooming houses, of course at higher rents. I have seen that happen even where the landlord, usually through his solicitors, has stated that the reason for wanting vacant possession of the house is that it was going to be renovated or changed to some other use. Even in cases such as that, when the people have vacated the house, it has been immediately put back on the market, and as I say, usually at higher rents.

My experience, also in case work in this area, does not indicate that the tenancies are of a shorter term than in the traditional apartment sector. I think it is important to realize that people who live in rooming houses as opposed to self-contained apartments--there is nothing inherently transient about people who rent in that sector of the market. They are looking for a place to live, a place to go home to, just as apartment tenants are and just as home owners are. The most common reason why they are renting in that sector is economic.

I think it is safe to say that on average, roomers and boarders are lower income than apartment tenants, who in turn are a much lower income than are home owners. The point I am making is that the housing is serving the same purpose for those people. It is not operating generally as a guest home or a travel lodge or anything like that. It is to provide permanent housing for people who cannot afford self-contained accommodation on the apartment rental market. On that basis alone, it is a growing inequality that these people do not have any statutory protection and in fact can be evicted on a week's or a month's notice without any reason being stated by the owner.

FRPOO also observes in its brief that there is a supply crisis and of course that is true. Supply crisis is being exacerbated by the lack of security for the occupants, particularly in times such as the last few months when we have seen heightened activity in the real estate market. The rate of

loss of rooming house accommodation accelerates. Speculators are snapping them up, emptying them out and converting them back to single-family dwellings or just sold at a profit. The selling price is usually enhanced by being able to deliver vacant possession because it gives the purchaser more options.

I think the Fair Rental Policy Organization of Ontario brief is the only one I have seen that really raises any serious reservations about the intent of Bill 10. I just wanted to make those comments with respect to that brief.

The other brief I want to comment on is the one you received from the Ecuhome Corp. As I understand it, it is a sort of co-venture between several church groups. They provide housing to people who are sometimes referred to as the hard-to-house. They are often hard to house for purely economic reasons. They seem to be supporting the intent of this bill but they do not want to be covered by it themselves.

I should say that most of the time of the advisory committee, in looking at the security-of-tenure issue, was taken up with just this question, the question of supportive housing in general, things such as group homes and so on, housing where there is a component of care or some kind of program that is designed to address problems other than purely the housing situation of the occupants. We had representatives of housing providers from that sector on the advisory committee, so we were well aware of their concerns. I think it is noteworthy that with that representation on the advisory committee, there was still unanimous support for our recommendations.

To sum up our recommendation with respect to supportive housing, what we proposed was not an exemption from the Landlord and Tenant Act. We do recognize that in many cases where there is a bona fide program of care that is associated with the housing, there should be special treatment for those operators under the act. It is important to distinguish that in your minds from just a blanket exemption from the act. We proposed blanket exemptions from the act, but that was for facilities that were more purely institutional in nature where the housing is really not the primary purpose.

The special treatment I am referring to is essentially analogous to something that is already in the act with respect to subsidized housing, such as the Ontario Housing Corp. and so on. There is a provision in the act that where the housing is operated on behalf of a government or governmental agency, and in the real world that translates essentially to subsidized housing, an additional cause for termination of tenancies is available to the landlord that is not available to the private sector landlord, and that is that the tenant no longer qualifies for the housing.

In OHC, as I understand it, that would typically be where the household income has risen to a point where they no longer qualify for subsidized housing or the family composition has changed. That is sometimes referred to as the empty-nester problem some of you may have heard of, where there are no longer any dependents on the premises and there is only an adult who is not disabled or old enough to qualify for Ontario Housing. On that basis, tenancies can be terminated.

There is a legitimate policy purpose behind that because the waiting lists are huge and there is a balancing there of the public interest, as represented by all the people who are desperately waiting to get into subsidized housing. It is balancing that against the interest of the tenant in the unit.

What we have proposed is that there be a similar provision or an analogous provision where the qualification for the housing is not necessarily economic, but may have to deal with fitting into a particular program that is being offered in connection with the housing.

We could not dot all the i's and cross all the t's in defining exactly what that would be. What we proposed was that there be a procedure whereby an operator could apply for a designation as special purpose housing and the application would be made to the minister. We think there should be consultation with all these groups in developing the guidelines, which perhaps could be embodied in regulations, under which the minister would grant or refuse to grant that special purpose housing designation.

1650

I think that is all I want to say and I will turn it over to Ms. Robinson to present the brief.

Mr. Chairman: I have to ask you to conclude rather quickly. We have questions and we only have half an hour per hearing. Ms. Robinson, will you be brief?

Ms. Robinson: I think Mr. Blazer has summed up a lot of what I wanted to mention.

I am here today on behalf of the Tenant Advocacy Group, who are people who work in legal clinics primarily across Metropolitan Toronto and work with the Federation of Metro Tenants' Associations. We have been doing casework representing tenants. We have been funded under the Ontario Legal Aid Act for 12 years now and we have been doing casework and developing experience.

What we have come to learn, especially with recent cases, is that for a rooming house tenant, there is often a lot of insecurity as to whether the person is covered by the act. In most instances, the person is not covered by the Landlord and Tenant Act. I spent two afternoons on the phone last week just answering questions on our advice line. Out of about 25 calls, I had to tell five people that because they were rooming house tenants, the landlord had every right to evict them and there really was not a lot they could do. They could try to hope they were tenants and pretend they were tenants if they really wanted to put their necks out on the line, but they probably were not and they probably would be evicted.

It is very frustrating to see that there are two classes of tenants, of people who rent. Over time, what we have seen is a lot of people who would very much like to be tenants, who would very much like to have their own bathrooms and kitchens, living in rooming houses either because that is the only available accommodation or because that is all they can afford. I do not think it is equitable to have two classes of accommodation, two sets of rules. If you can manage to get a place with your own bathroom and kitchen and your own entrance with a lock on it, you are okay, but if you cannot manage that, then you do not know if you can stay there.

I think it is important to say to people who are in that position, who are rooming house tenants, that they can have a home. Really, that is the difference. Security of tenure makes the difference between having a home and having a place to stay.

It is important to realize that 1987 is the International Year of

-Shelter for the Homeless and has been declared so by the United Nations. The United Nations has declared that decent housing is a basic human right. What we have to realize is that if rooming house tenants can be turfed out, for a lot of them the only option is homelessness. If they cannot get into a shelter, if they cannot get another place right away and if they do not have relatives to stay with, their option is homelessness and a lot of people have ended out on the street.

The United Nations has targeted, as International Year of Shelter for the Homeless, some action areas and one of the action areas is--they say in national policies but in Canada this is a provincial matter--special provision in national policies, legislation and regulations for security of tenure and improved services for the poor and disadvantaged. I think it would be Ontario's contribution to the International Year of Shelter for the Homeless if we were to pass an amendment to the Landlord and Tenant Act giving security of tenure to roomers and boarders.

I should also introduce another hat I wear, and that is that I sat on the Rent Review Advisory Committee. That was a committee of landlords and tenants that met for an entire year last year and made recommendations that included Bill 51, the new rent review legislation. As the Minister of Housing (Mr. Curling) said to the House many times, the report of the Rent Review Advisory Committee represented what he called the delicate balance between landlords and tenants.

It is important to realize that the report of the Rent Review Advisory Committee not only included recommendations around Bill 51 and rent review, but it also included a lot of other tenant protections that, on the committee, we felt were some tradeoffs for the rent review provisions. One of the recommendations of our report was that rooming and boarding house tenants be given security of tenure.

We were told at that time that there was a committee that was looking into the matter. We were told it was required to produce its report on security of tenure by September 1986. On that basis, we did not go into details of recommendations. There were delays with that committee. If the Legislature has accepted the report of landlords and tenants on the Rent Review Advisory Committee, then it must be accepted as a whole. Security of tenure for rooming and boarding house tenants is late now because we have had the rent review provisions for an entire year--since last December; sorry.

I think as well that it is important to realize that under the Landlord and Tenant Act we are not looking at a panacea for tenants, so that once you get in, there is no way you can get out. The Landlord and Tenant Act provides pretty quick remedies for landlords against tenants who have not paid their rent, who have damaged the premises or who have seriously bothered other tenants, but it stipulates that the landlord must have a reason, such as one of those reasons, in order to evict. It gives the landlord an opportunity to give a tenant 20 days' notice for those reasons. If it is nonpayment of rent, the landlord can apply to the court after 14 days. If it is something such as damaging the premises or bothering tenants, a landlord can apply to the court after seven days. It takes very little time to get into court.

Every time you hear about backlogs in court, that does not apply to all courts. The landlord and tenant court is quite quick. The notice of motion has to be served on the tenant only within four days of the court date. Once you go to court, you usually see a registrar first and the matter gets put before a judge. That can take up to a week. The judge hearing the matter has

-authority under the act to delay the sheriff's enforcement of writ of possession for only one week.

We are looking at a pretty fast process. Often we hear from landlords that, "You get into court and there are backlogs and delays." It is true that when someone goes to court, if they are very crafty, they can cause delays. We will never get around that, but more often than not, delays are caused by landlords who just do not understand the procedures. They have not got moving and issued notices and issued them properly.

On page 3 of our brief, which has been circulated to you, is a list of the organizations and reports that have recommended Landlord and Tenant Act coverage for roomers and boarders. The Rent Review Advisory Committee is not on this list. We did not go so far as to stipulate that security of tenure be provided by the Landlord and Tenant Act. We merely recommended that roomers be given security of tenure. Looking down this list, I think it is pretty sad to read that a number of the recommendations are from verdicts of coroners' juries into deaths of a number of rooming house tenants, as far back as 1974.

What we are looking at now is the issue of what delays would cause tenants. If the owners of rooming houses know that legislation is coming in to provide security of tenure--they do now; there has been a fair bit of publicity around this issue--the longer the time delay between when they have that knowledge and when the law is passed, the more opportunity there is for them to evict anyone they do not want to be stuck with. Probably that is why we have seen heightened activity in evictions of roomers. People want to get them out and get vacant possession before there is security-of-tenure legislation. It is imperative for the House to act as quickly as it possibly can to pass legislation for security of tenure. Delay, particularly delay over the summer, will just mean increased pressure on tenants to move out.

That concludes my remarks. I think we can answer any questions now.

Mr. Partington: Thank you for your presentation. We certainly appreciate the need for security of tenure in boarding houses. One question I have is, you talk of boarding houses and Bill 10 talks about a roomer, a boarder and a lodger, I wonder if you comment on a situation where there may be a family and seasonally they take in a college or university student or two, or a situation where you may have a widow in a house who in order to provide money to sustain herself takes in one, two or three boarders on a permanent basis. Do you see those situations being covered by this act or exempt from it?

Mr. Blazer: We cannot present a united front on that question. The advisory committee, of which I was a member, recognized the uniqueness of that situation. We recommended that where there are up to two roomers in a dwelling that is occupied by the landlord and where they have to share facilities with the landlord--in other words, it is not a completely self-contained apartment--there be special provisions for that. Basically, the landlord would not have to prove any cause for eviction. The act would still apply otherwise. The tenant would still be entitled to notice and so on, but we recognize that where people are essentially taking someone in almost as part of the family, not getting along, we felt, should be sufficient cause.

1700

There is a parallel to that in the Ontario Human Rights Code where it is recognized that when you get to that level, which is really basically a very

-private sphere, it is not very meaningful to try to legislate those relations. Now the Tenant Advocacy Group, of which I am also a member, has a different position on that question.

Mr. Partington: What is their position?

Mr. Blazer: I think their position is essentially that those situations should be covered as well. I should say that the advisory committee considered that position. We do not think they are really that far apart because a judge hearing an application by a landlord who wants to get rid of a tenant on the grounds that the tenant is interfering with the reasonable enjoyment of the premises by the landlord, and that is something that is already in the act, would apply a different standard. If the tenant and the landlord are actually sharing facilities, I think there would be a much stricter test applied. In other words, the tenant would have to meet a much higher standard of behaviour than would be the case in a self-contained apartment.

For example, in renting a private apartment, I have seen landlords try to evict people in apartment buildings because they cooked fish too many times a week and they did not like the smell. That is sort of laughable, but maybe for things that might seem none of the landlord's business in an apartment building, if there were actually shared facilities in a private home, a court would give more weight to those kinds of things.

Mr. Partington: For example, would you be prepared to make a college student in a home subject to going through a formal hearing to prove the landlord's case? Is that right? That was the Tenant Advocacy Group's position.

Mr. Blazer: That is the TAG position.

Ms. Robinson: That would only occur if the student opposed the eviction.

Mr. Partington: But that is the point.

Ms. Robinson: Yes.

Mr. Partington: Do you not think that might hurt accommodation rather than help it? Do you not think people then would say, "I do not want to take in tenants or boarders if I may be put through that," in view of the very personal relationship?

Ms. Robinson: I think that argument, when it is extended, would support absolutely no protection for tenants who have to take whatever comes, otherwise no one will give us housing. It is an argument that comes up every time we push for tenant protection.

Mr. Partington: Surely, there is a distinction between that case and a rooming house case, for example.

Ms. Robinson: There is a difference in the position of the landlord. There is not a difference in the position of the tenant. The tenant needs housing. As soon as you provide a tenant with housing, I think we have to assume in this day and age that there are a certain number of things that go with the housing. One of them is security of tenure unless you can be evicted for cause. As Michael set out, the Landlord and Tenant Act provides a lot of reasons for cause. It also provides for landlord's own use. If somebody taking

in a student decided they did not want to rent the room out any more or their child was coming home to live with them again, they could evict for landlord's own use or the use of an immediate relative of the landlord.

Mr. Partington: Thank you. I am not sure I agree with you.

Mr. Chairman: Further questions from members of the committee? There being no further questions, I would like to thank you for your submissions before the committee. Certainly, we will take your comments into account as we proceed through Bill 10.

I am going to ask Mrs. Marland to assume the chair since I have another commitment that I have to leave to attend. I will let Mrs. Marland proceed with the next group.

The Acting Chairman (Mrs. Marland): Is Mr. Winchell here and the rest of your group, Mr. Winchell, Mr. Binions, Ontario Long Term Residential Care Association. All of you please feel free to come forward. For the members of the committee it is exhibit 12, and it has been distributed. Would you introduce yourselves, please?

Mr. Winchell: My name is Rick Winchell. I am the executive director of the Ontario Long Term Residential Care Association.

Mr. Binions: My name is Brent Binions and I am with JBG Management. I am a member of the Ontario Long Term Residential Care Association and I also sit on the advisory committee of the ministry of senior citizens affairs on the new proposed regulations for rest homes.

The Acting Chairman: Mr. Sheahan is not here, is that right?

Mr. Binions: No, he is not.

The Acting Chairman: He is not attending?

Mr. Binions: He is not here.

The Acting Chairman: All right. Thank you. If you would like to proceed with your presentation, the time factor, I understand, is half an hour.

Mr. Binions: That should be fine.

ONTARIO LONG TERM RESIDENTIAL CARE ASSOCIATION

Mr. Binions: The Ontario Long Term Residential Care Association is a professional association that represents owners and operators of retirement homes in Ontario. The association currently represents the operators of more than 400 independent retirement homes who provide more than 10,000 beds for senior citizens.

We appreciate the chance to make this representation to the committee, on the amendments to the Landlord and Tenant Act. Our specific focus is in commenting on the amendments that would expand the definition of the term "roomers, boarders and lodgers."

We believe the new definition, as it has been set out, would include the residents of retirement homes. What we are asking is that the language be amended to make it clear this amendment is not intended to cover retirement

home residents. We are looking for inclusion in the Landlord and Tenant Act similar exemptions to those that were put into the Residential Rent Regulation Act, which we understood at the time in our discussions with them were intended to exclude retirement home residents. There is a copy of the section of the rent regulation attached to the back of the brief.

The effect of the exemptions is to ensure that the facilities and services provided for residents of retirement homes would continue to be regulated under any existing legislation, and more importantly, under future legislation, rather than added to the Landlord and Tenant Act. As the committee is probably aware, the ministry for senior citizens affairs has established two committees, one to look at extended care to the elderly of our province and one to look at retirement homes. They are working on specific legislation to look after the industry.

There are a number of reasons why we feel retirement homes should be excluded from these amendments to the Landlord and Tenant Act. We view the inclusion of retirement home residents as unnecessary because it is dealt with in other places and will be fully dealt with in the near future. This legislation is inappropriate to retirement homes.

The legislation was set up to extend protection to residents of rooming houses and boarding houses--security of tenure. Retirement homes are not like rooming and boarding facilities. We do not receive rent, as rent. We receive a fee for services rendered. We provide many services to our residents: basic supervision, basic life skills support, housekeeping, laundry, transportation, dining, recreation and activity programs. Accommodation is just one of the many services we provide.

As a result, we view it as inappropriate that retirement homes be brought under the scheme of an act whose purpose is to govern a relationship between a landlord and tenant, when clearly the relationship between a retirement home operator and a resident is quite different from that of a landlord and tenant.

Most of our residents are elderly. About 80 per cent are more than 65 years of age. The vast majority, about 85 per cent, are female. While many are in good health, some require nursing support. Most require some assistance to enable them to live independently. The majority of retirement residents takes advantage of social services like recreational and activity programs, provided or organized by the retirement home. Very few of our residents are short-term or transient. An average stay is between five and 10 years.

It is important to understand that the majority of retirement residents would not live on their own, but prefer to live under the programs provided by retirement homes. They use the services offered to retain their independent lifestyle for a longer period of time. This is very different from the circumstances that pertain to roomers, boarders and lodgers, and different regulations are required to govern our situation. The legislation that is appropriate for a landlord and tenant relationship is quite inappropriate for retirement homes because the combination represents only a small part of the entire retirement home service package.

1710

We do not oppose regulation of retirement homes. There are quite a number of existing acts. The mishmash of existing legislation is one of the reasons why the Advisory Committee on Rest Homes with the ministry of senior

-citizens affairs has been struck, to bring it all under one set of legislation, one global policy to look after all our elderly in this province. The new regulations will be part of this comprehensive provincial policy governing the provision of services to our elderly. We are currently part of that. We know it is necessary and desirable. We have begun negotiations and discussions. We are on the committee. We have negotiations with the ministry and with other groups interested in the welfare of senior citizens.

I spoke about the two committees that are already out there, one with respect to extended care and one with respect to rest homes. We are providing some background information for these regulations directed to the ministry of senior citizens affairs. The information is coming from the Ontario Long Term Residential Care Association.

We welcome the opportunity to contribute to the development of a reasonable, well-considered and comprehensive policy regulating services provided to our seniors. We sincerely hope such a policy will result from our efforts and those of all interested groups. In our view, this process will be slowed and impeded by any piecemeal addition of regulation under this act. For these reasons, we respectfully ask that you consider including in your amendments to the Landlord and Tenant Act exemptions for retirement homes.

The Acting Chairman: Thank you. Are you Mr. Sheahan?

Mr. Sheahan: Yes.

The Acting Chairman: And that completes your presentation?

Mr. Binions: That is our presentation.

Mr. Reville: Would you amplify a bit about the task force that has been set up to study these issues?

Mr. Binions: Certainly. In fact, two task forces have been set up through the Minister without Portfolio responsible for senior citizens' affairs (Mr. Van Horne). One of the task forces is looking at extended care, the rationalization of the entire extended care level of service. "Extended care" is a defined term under the Nursing Homes Act and also the Homes for the Aged and Rest Homes Act. It is a level of care that is defined. It is a higher level of nursing, medical care.

A second committee is looking at the area of rest homes, which is really not as well defined as it needs to be. One of the basic purposes of the rest home advisory committee is to look at the definition of rest homes or retirement homes in the province, and come to some focus on what they are and how they should be dealt with in all areas.

Mr. Reville: When the resources committee was dealing with Bill 51, we were discussing clauses (e) and (g) in section 2 of the Residential Rent Regulation Act. At that time, we were advised that a task force was going to be set up to look into these issues.

Mr. Binions: Right.

Mr. Reville: Can you tell me whether there is representation from the Ministry of Housing on that committee?

Mr. Binions: Yes, I have it with me if you want a list of people on

it. There is Housing, Health, Community and Social Services, and one other ministry.

Mr. Reville: If you would not mind tabling that information, I know this area has been of concern to many members of the Legislature. We would be pleased to hear you are doing some work on it.

Mr. Binions: The committee has met and another meeting is set for the week after next. Information is being collected, briefs are being submitted similar to what you have here, a whole bunch of briefs, and they are being reviewed. The matter is proceeding. Would you like us to provide you with a copy of the members of the--

Mr. Reville: Maybe you could provide it to the clerk who could see we all got it.

Mr. Binions: I think I have it. I may not have it here. If not, we will get it and submit it to you right away.

Mr. Reville: Thank you very much.

The Acting Chairman: Are there any other questions? There being no more questions, I would like to thank you for your presentation to the committee this afternoon. We will look forward to getting that other material.

The committee adjourned at 5:15 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

LANDLORD AND TENANT AMENDMENT ACT

TUESDAY, JUNE 16, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Jackson, C. (Burlington South PC) for Mr. Rowe
Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Homes First Society:

Greaves, E., Board Member
Francis, M., Staff Member

From Regional Realty Ltd.:

Sedgewick, M., Executive Director, Fair Rental Policy Organization of Ontario
Hoffman, J., Director, Fair Rental Policy Organization of Ontario

From the Open Door Centre and Rooms Registry Service:

Morris, L., Executive Director

From the Ontario Real Estate Association:

Cathcart, J., Senior Vice-President
Doyle, B., Director of Communications

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 16, 1987

The committee met at 3:40 p.m. in room 228.

ORGANIZATION

Mr. Chairman: The standing committee on administration of justice will come to order. Members of the committee, there are a couple of quick items of business before we get started with this afternoon's hearings. The first item of business relates to the invitation that was extended to the Minister of Housing (Mr. Curling) to be in attendance for at least part of the discussion of Bill 10. The Honourable Alvin Curling has apparently declined this invitation and I wish to pass on to members of the committee that response on the part of the minister. If there are any comments, I will certainly entertain them now.

Ms. Gigantes: People get thrown out for saying things about the Honourable Alvin Curling.

Mr. Chairman: This chairman does not throw members of the committee out with any great degree of frequency, mainly because we do not have that many members on the committee at the present time. I want to carry on, so I will give you a great deal of latitude in whatever one might want to say.

Mr. Polsinelli: Mr. Chairman, are you aware whether we have any staff monitoring our progress?

Mr. Chairman: Yes, I am aware of Susan Goodman who is from the staff of the Ministry of Housing and is in attendance. Mrs. Goodman, could you just stand and be identified? I believe the gentleman with Mrs. Goodman is also from the Ministry of Housing. I am sorry, sir, I do not know your name.

Mr. Priebe: David Priebe.

Mr. Chairman: Mr. Priebe is the senior policy analyst, I believe, for the Ministry of Housing. In response to the question, yes, there are representatives of the ministry here. Is there any further comment on that point?

The clerk advises me that this committee will need authorization to sit in September to conclude Bills 10 and 42 if we have not done so before the House adjourns for the summer break. The problem is that we do not know whether we will finish. Do you want to request permission to sit in September? You do not have to use it but we must make the request to have the sitting time. This is the dilemma the clerk has discussed with me. In other words, if we conclude Bills 10 and 42, we will not need September. I am asking now for the committee's consideration to give me authorization to request sitting in September.

Ms. Gigantes: Only if Bill 10 is not done.

Mr. Chairman: And Bill 42.

Ms. Gigantes: No, just Bill 10.

Mr. Chairman: I think that is entirely unfair considering the fact that we have both bills under--

Ms. Gigantes: We have spent a lot longer on Bill 42. We had a time allocation for Bill 42. In my mind, we have not fulfilled our commitment to Bill 10, which was agreed upon.

Mr. Chairman: That is really not the issue at hand. The issue at hand is that if we do not finish either Bill 10 or Bill 42, we would sit in September. I do not plan sitting in September unless it is absolutely necessary. All I am asking for is your consideration so we can proceed now to make the request.

Ms. Gigantes: If Bill 10 is not finished, I think we should request time for Bill 10. I do not think the world is going to come to an end if we do not deal with Bill 42 in September.

Mr. Poirier: Bill 10 and 42, in case, as an insurance policy.

Mr. Chairman: As I read it, Ms. Gigantes has limited her comments to Bill 10. I have on two occasions now asked her to expand this to include Bill 42. Do you wish to make any comment in that regard?

Mr. Poirier: We plan to finish before leaving, but as an insurance policy we should give you the mandate to seek time in September for Bills 10 and 42, just in case. You are better off to have it than not to have it.

Ms. Gigantes: Is that the official government position, that we are better off to have Bill 42 than not to have it?

Mr. Poirier: No, the time in September.

Ms. Gigantes: As a committee, we have devoted all the time we said we would devote, and more, to Bill 42. We have not come to an easy resolution of Bill 42 and I do not treat it as a matter of urgent necessity to deal with it. We had an agreement that we would deal with both bills in the time we had left before the end of the session. We have not devoted enough time to Bill 10. We had better start now. If Bill 10 is not complete, I would be quite willing to say the committee should sit in September on Bill 10, but not on Bill 42.

Mr. Polsinelli: What if Bill 10 is completed and Bill 42 is not?

Ms. Gigantes: No, there is no urgency about Bill 42. In my view, we have spent enough time on Bill 42.

Mr. Polsinelli: Just put it to a vote.

Mr. Chairman: All right.

Ms. Gigantes: We have to deal with it when the session starts again, if the session starts again. That is another matter.

Mr. Poirier: We agree with you.

Ms. Gigantes: Then let us ask for time for Bill 10, if we need it, not for Bill 42.

Mr. Chairman: I am agreeing with that, only we are including Bill 42 in that discussion.

Ms. Gigantes: No.

Mr. Chairman: All right. Ms. Gigantes says no. We will bring this to a vote shortly, but I would like to hear from Mr. Polsinelli whose sage and incisive advice in these matters is always entertained by the chairman.

Mr. Polsinelli: Quite simply, I would like to say that while I agree with Ms. Gigantes that Bill 10 is of utmost importance and that we should complete it as quickly as possible, I think it would be tremendously unfair on the part of this committee to Mr. O'Connor, who also has a private member's bill before this committee, if we do not agree to proceed with our deliberations after completing Bill 10 and discuss and conclude Bill 42.

Mr. Chairman: Mr. Polsinelli moves that the chairman be authorized to request time from the Legislature to sit in September to complete both Bill 10 and Bill 42.

Motion agreed to.

LANDLORD AND TENANT AMENDMENT ACT
(continued)

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

Mr. Chairman: With apologies for starting late, the first delegation we have before us is the Homes First Society. I would like that delegation to come forward, if it would. Just sit right here at the front. I would like you to begin by introducing each of the members of your delegation.

While you are getting seated, let me welcome you to our committee discussions. We look forward to hearing your comments. Your brief has been circulated to the members of the committee and it is numbered 13. Whenever you are ready, you may begin your comments to the committee.

HOMES FIRST SOCIETY

Ms. Francis: I would like to introduce Cathy Culligan. She is an ex-resident of 90 Shuter Street, which is the Homes First Society's first project. Next is Elizabeth Greaves, a board member with Homes First. I am Margot Francis. I work on staff at 90 Shuter Street. We have a written submission for you. We can read through that submission or just look at highlights. I do not know whether you have had time to look at the details.

Mr. Chairman: If I may interject--the committee members may wish to comment on this--it might be better to highlight the brief and leave a little time for questions. The committee members can review the detail of the brief at their leisure but they will not always have you before them. I think it is important that we have an opportunity for some exchange. With the indulgence of the members of the committee, I suggest that we just highlight the brief and then get into questions. Okay?

Ms. Francis: Sure. Our brief is very short, so I will just go over it paragraph by paragraph.

Homes First is a nonprofit housing society. We have one project so far, at the corner of Jarvis and Shuter streets that houses 77 people. These people are low-income singles.

Many of the people who live at Shuter Street have lived in rooming and boarding houses before moving into our project. Many of them have experienced the kind of lack of protection that people in rooming and boarding houses live with day to day, the lack of protection that most people get under the Landlord and Tenant Act.

This neighbourhood has witnessed a dramatic decline in affordable housing over the past 20 years, which I am sure you are all aware of. This has resulted in thousands of people being homeless and on the street.

This government has committed itself to protecting the affordable housing stock that is presently in place and much of that stock is in rooming and boarding houses. However, those people do not have security of tenure. Many rooming houses in our neighbourhood are under seige at this moment. I think there are over a dozen houses where roomers are being evicted without any kind of due process and without recourse to landlord and tenant law.

We would like to support Bill 10 and ask you to pass this amendment to the landlord and tenant legislation without any further delay. We certainly support the member for Ottawa Centre (Ms. Gigantes) in asking that this bill be passed before the end of this session.

1550

Shuter Street is not covered by the landlord and tenant legislation, so I would like to highlight for you some of the aspects of due process that have been developed at this building to ensure that people there receive a fair process in handling any building or apartment disputes. It is important to note that the building is shared accommodation. Each of the apartments has four or five bedrooms. People share common living space, which is the living room, the kitchen and the sun porch. They have their own bedrooms.

When a person moves into Shuter Street, he signs a document called a licensing agreement and a set of building rules. These were developed by the residents' council and the Homes First Society before the building opened more than two and a half years ago. That licensing agreement is attached to the back of this submission and so are the building rules.

This licensing agreement describes a system of due process for resolving problems in apartments and in the building. When a problem arises, the individual or the group has an opportunity to come to the committee and present a proposal to it about how to resolve the issue. The problem could be anything from rent arrears to property damage to perhaps threats towards other people who live in the apartment with them.

This committee that people make proposals to is made up of three residents who live at Shuter Street and three members of the Homes First board of directors. Cathy and Liz are here because they have both participated on that committee for the past two and a half years. Cathy was one of the original residents at Homes First and helped to develop the licensing agreement and building rules and worked on the arbitration committee for two

and a half years as a resident. Liz, as a board member, was also involved in every step of that process and has worked with the committee. The staff's role relating to this committee is limited to helping people prepare their proposals. The staff does not have a decision-making role in this committee. The decisions on any evictions are left to the residents and the board members on that committee.

An example, which is outlined here in the brief, of a typical problem that would come to the arbitration committee is rent arrears. Homes First has tried to develop a flexible policy around rent, considering that the people who live there are all on low incomes. Our rent policy states that people can pay their rent when their cheques come in. That can be weekly; it can be every half month; it can be at the beginning of the month. It depends on when they get their cheques.

If a person falls behind in his rent, he can make out a schedule about when that rent will be paid, present it to the committee, and hopefully the schedule he proposes will work and his rent arrears will be paid off. If that does not work, he can go back to the committee. It has the option of working out another schedule with him or giving him notice.

We think this system has allowed people who moved from hostels, from ex-psychiatric situations, from the street, whose norms may be quite different, to move into a stable housing situation in a gradual way, to make contracts they can live with and present these to other residents who really set the building standards or norms. It also has allowed those building standards to change over the two and a half years we have been in existence, according to people's lives changing and settling out.

The committee also operates on a case-by-case basis, I should say. That allows it to respect the different rules each apartment makes and treat different situations accordingly.

We believe this kind of arbitration system is essential for the people who live at Shuter Street in developing a sense of ownership and participating in the management of their housing. It also allows us to make policy decisions that are responsive to the people who live there. For instance, the board has approved a policy that staff members do not have access to people's apartments unless they are requested to go in, so they have more protection than many people who are in the private market or in rooming and boarding houses.

In order to continue operating in this kind of flexible system, we would require an exemption from Bill 10. We would like to propose that the details of this exemption be worked out after the bill is passed into law and urge that the committee pass the bill without any further delay.

Mr. Polsinelli: Thank you for your presentation. I would like to compliment you for the work you are doing. I am a bit curious, though, with respect to the presentation and the rules you have in your facility. If Bill 10 is passed, your facility will be covered by the Landlord and Tenant Act, which means essentially that your rules almost go out the window. I am looking at the rules at the back over here on the schedule. You say that contravention of (a), (b) and (c) would be grounds for asking the tenant to leave. Would you still be able to enforce these if you were covered by the Landlord and Tenant Act and how important is this to you at this point?

Ms. Francis: I think it is fairly important because we have a shared-housing situation. In other words, people's behaviour in a shared

apartment, where there are four or five people living together, impacts on the other people living there a lot more than it would if people had their own bachelor units. My feeling is that it is important. That is the first point.

The second point is that (a), (b) and (c) are enforced by the arbitration committee according to the individual situations people bring to the committee. It is not enforced unilaterally; it is enforced according to the situation.

Third, just responding to your third point, I am aware that a number of groups have made submissions to the committee and are expecting to be exempt from Bill 10, the Supportive Housing Coalition of Metropolitan Toronto, Ecuhome, that kind of thing. I expect that some exemptions will be made.

Mr. Polsinelli: I guess my point is that if you are endorsing the passage of Bill 10 as it stands, and if the passage of Bill 10 as it stands without any exemptions would at that point eliminate the enforceability of your rules, would you still want the passage of Bill 10 as it stands, given that at that point residents may be allowed to bring alcoholic beverages in and you may not be able to have special rules with respect to their behaviour? I am not sure of all the intricacies under the Landlord and Tenant Act, but I am sure some of your rules and regulations would no longer be enforceable. Would you still want that, given that may be a possibility? Would you still want passage of Bill 10 as it stands without any amendments?

Ms. Greaves: Perhaps I can speak to that on behalf of the board of Homes First. We are aware of the consequences for this particular project. I might add that other projects we are involved with will not have shared accommodation. We will be operating under the Landlord and Tenant Act and we prefer to do so. Our board feels very strongly that this protection must be extended now to roomers and boarders. We will have to hope that exemptions can be made for our particular circumstances, but we would support passage of Bill 10 at this time with no exemptions.

Mr. D. R. Cooke: May I ask a supplementary?

Mr. Chairman: Is it truly a supplementary because I have Ms. Gigantes next?

Mr. D. R. Cooke: My understanding of what you are saying is that you would really like certain other situations to be controlled. In other words, you want Bill 10 to be very widely adapted to almost every situation where room and board is included, but you would like yourselves not to be included. There is nothing wrong with that. Is this really what you are looking for as opposed to saying, "We will go along with it in order to get everyone else in"?

Ms. Greaves: No. I think we feel that there are other circumstances and other ways of operating that can protect an individual as well as a group. We are particularly focused on group-living situations, but we would want to see some well worked out living agreement, which we feel these agreements are, with our residents and board.

1600

Mr. D. R. Cooke: The bottom line is you would have to be exempted because you cannot have a licensing agreement under the Landlord and Tenant Act.

Ms. Greaves: We realize that.

Ms. Gigantes: I am going to pursue the same line of questioning because although I have not been able to participate directly in the hearings until now, I have read the background briefs that have been presented by groups such as yours that you have mentioned. I know the interest that has been expressed in exemptions and I would like to understand that better.

If my quick refresher is correct in terms of how the Landlord and Tenant Act works, section 109 provides the landlord with a fair number of areas of conduct and compliance with what I think is called "reasonable enjoyment" requirements on the part of other tenants, or boarders in this case, and it allows the landlord to seek an eviction within 20 days of notice.

Your contract allows you to give 30 days notice. I am wondering in what specific aspects you feel section 109 would not be adequate for a housing development such as yours.

Ms. Greaves: Of particular concern to us is the fortunately infrequent physical violence in a group setting where one of four or five members of a unit can so threaten and intimidate other people that it is a situation that cannot last 20 days, in our opinion and theirs.

Ms. Gigantes: But if there is a situation of apprehended violence, it is a situation where people would normally call the police and say, "There is a threat going on here."

Ms. Francis: The police may be called, but in my experience this does not solve the problem. The person may be charged.

Ms. Gigantes: I understand but suppose you--

Ms. Francis: But the person is then back in the apartment.

Ms. Gigantes: If you have an incident in your shelter in which there is an immediate threat of apprehended violence--I guess I have doubled up there, "immediate apprehended"--and if there is some strong indication that there is a requirement for a quick remedy, how does 30 days' notice under your contract help you?

Ms. Francis: The contract does say that a person can be given less notice if that is authorized by the committee of residents and board members, so there is the flexibility to give less notice if that is necessary.

Ms. Gigantes: I would like to go back to this again because many of the particulars you have described about the setting in which you provide housing are very similar to private boarding houses or rooming houses that I know in the city I come from, Ottawa, which is that people have bedrooms of their own but they share a common living space, a kitchen, a sitting room and certainly a bathroom facility. Many of the concerns that exist around this kind of living arrangement would exist in a private rooming house arrangement.

We are calling upon private rooming house operators and owners to abide by the landlord and tenant law. We would be counting, in situations of apprehended violence, on an immediate intervention of a supportive kind from outside. How short a notice could you give somebody? Immediate? Would you say, "Do not come back tonight"?

Ms. Francis: No. The staff can request that, but it would have to be the committee that could authorize it. It which could meet on short notice. When the building first opened, it did meet on short notice.

Ms. Gigantes: What is the shortest notice on which you have ever asked someone to leave?

Ms. Greaves: The committee has asked someone to leave that evening.

Ms. Gigantes: Do you this would be impossible under the Landlord and Tenant Act in terms of the kind of moral powers of the setting?

Ms. Greaves: I think one of the differences for us would be that the residents feel they have the right and the authority to make this kind of statement to one of their friends or somebody who lives in the building with them, that the contract between them has broken down, that this person is threatening to the entire fabric of the building and that they have this ownership over their building. I think it is almost more of a family situation.

Ms. Gigantes: I do not want to be argumentative but I certainly know of privately operated rooming houses where people live in the same kind of balanced system, if you like, in which you are living at close quarters. One either co-operates or it does not work. If we are asking for people to be protected under the legislation, which we are and which you approve, then the same situations that you speak of, in terms of the shelter you operate and live in, can arise in a privately run rooming house.

Ms. Greaves: I think to some extent the size of this project affects this. There are 77 people of all ages living in the building. In addition, the fact that Homes First does not try to screen out the more difficult people, but has a mandate of housing hard-to-house, might have an impact on how the residents view this as well.

Ms. Gigantes: The Human Rights Code says landlords should not be screening anybody out in terms of private accommodation--

Ms. Greaves: Yes, it does.

Ms. Gigantes: --unless the landlord is sharing that accommodation, which is infrequently the case with privately run rooming houses.

I just wonder why you think it is something that is desirable from the point of view of the private operations you know and which would be totally unworkable in your situation. I am wondering if the same arguments will not be developed by some rooming house operator who comes before us and says, "You simply cannot run rooming houses that way." You will tell us, with your experience of people who need rooming house shelter, that you can.

Ms. Greaves: We feel there are more abuses in the private sector.

Ms. Gigantes: I am sure that is true. You see the problem we have in terms of trying to deal with this legislatively.

Ms. Francis: It is a problem legislatively. I think it is one we have dealt with by trying to develop a system of fair and due process. Within the context of our building, we have asked people who live there to be involved in making decisions about how it runs. Perhaps if rooming house

operators did the same thing, there would not be a need for them to be covered under the Landlord and Tenant Act.

Ms. Giganteres: Right.

Mr. Chairman: Could I move along? Time has just about passed by for this delegation and Mr. Jackson wants to get on with a question.

Mr. Jackson: I have two questions. The first has to do with your suggestion on page 4 that you would seek an exemption, but not necessarily at this time if it would impede the bill. You are the fourth group to come before us that provides the very unique type of housing you provide and that has made the same suggestion in both elements of it. "Do not hold up the bill for it, but we certainly feel there should be an exemption for us."

I have been working on some sort of amendment that would accommodate this and would in no way deter the progress of the bill. I asked if the exemption that currently exists in Bill 51, the bill for residential rental regulation in Ontario, was sufficient. It was deemed by one independent adviser that it was not. I wonder whether you would support an exemption that would call for an exemption for all group homes accommodation provided on a nonprofit charitable basis.

There is not a specific care component to your program, but there are rather unique circumstances with which your board makes internal decisions. Would you support an exemption that was as generally stated as that, under which, I understand, you would clearly qualify since you are a nonprofit operation?

1610

Ms. Greaves: No, we would not.

Mr. Jackson: You would not.

Ms. Francis: Not unless there was some system of due process that those groups also had to follow.

Mr. Jackson: I need you to explain this. I was offering to you an exemption from the Landlord and Tenant Act so that you could continue to operate in the manner in which you are currently operating. Is this not what you are looking for?

Ms. Francis: We are also looking for roomers and boarders to be covered.

Mr. Jackson: Roomers and boarders would be. You have indicated that you do not feel your kind of operation would--

Ms. Francis: If the amendment also included that the groups had to describe some form of due process they go through in order to justify eviction--

Mr. Jackson: I am getting to that in my next question.

Ms. Giganteres has raised several questions with respect to a process where your board is essentially representative of landlords and tenants, but ultimately, where you are concerned about the protection of other tenants, you

become the landlord; in other words, the final say in terms of the rules that govern access to your accommodation. Several groups have come forward with the concept you are conveying and the concern you have raised. Ecuhome, for example, when it was here before us, indicated it did not feel the police option was effective because it had had bad experiences with the police. That was not sufficient in terms of removing the risk factor when it does occur. Incidentally, for your own information, violence was the example that was used on two other occasions. The Supportive Housing Coalition of Metropolitan Toronto also made reference to that.

There has been some suggestion by the Advisory Committee on Roomers, Boarders and Lodgers and in other jurisdictions that there be some quick remedy--the reference that Ms. Gigantes referred to. Quick remedy could be a process that involves due process with a third party, whether it is immediate access to the courts so that a judge or an independent review panel could determine the circumstances as conveyed and make a final decision about the tenant's suitability. Do you support that kind of a model for quick remedy?

Just to answer Ms. Gigantes's question she asked of you, a time frame of four or five days was suggested in terms of access to the courts or to this independent body that would make the decision. It would give due process a four- or five-day time line. Is this something closer to the kind of model you would be more comfortable with, providing protection for roomers and boarders while at the same time providing a more secure environment for group homes, nonprofit charitable housing organizations that provide a care program component?

Mr. Chairman: I wonder if you could repeat the question.

Mr. Jackson: I thought you were going to limit me to two questions.

Ms. Francis: I think it would be helpful, particularly for group living situations. I think that is a key. Homes First would not necessarily want to be under a licensing agreement if we were managing bachelor apartments or two-bedroom apartments for single parents. I would like some kind of wording about shared accommodation in that amendment. I think the other component of this system is to have people in the building make these decisions so it develops a sense of ownership by the people there, in addition to providing a quick remedy, which would not be provided by the courts. It would be some--

Mr. Jackson: We suffer as legislators with coming up--this is what Ms. Gigantes's point was. If we are going to provide due process, how can we do that when it is not at arm's length or independent with respect to protecting certain rights? I understand what you are saying in terms of developing a model that gives due process, but then you are still able to make what finally amounts to a firm and hard decision that, "You are no longer eligible to be a tenant here as of tomorrow night." That is very difficult when the group that lives there is making the decision, as opposed to an independent body making the decision. What I am hearing from you is that you would still like to be part of that decision-making process. That presents itself as a very interesting dilemma for us as legislators, to develop a model that achieves that balance. I am at a loss to determine where one exists. I do not know of one.

Mr. Chairman: You are not really forming that in the way of a

question. We have a serious time problem. The next delegation is already 15 minutes late because we got a late start.

Mr. Jackson: I thank the deputants, then, for their candid comments.

Mr. Chairman: You are musing philosophically.

Mr. Jackson: No, I was trying to get to the nub of something because I will be tabling amendments to this bill given the fact that with the announcement we anticipate from the Attorney General (Mr. Scott) tomorrow, this bill is going to be delayed well into the fall, possibly until as late as Christmas. We are going to have ample opportunity to receive all sorts of amendments. This is an opportunity for items such as the ones I have raised to be on the record, so we do not have to go through a process of another round of public hearings and can get on with this bill as quickly as possible. That was why I was musing philosophically, as you put it, Mr. Chairman. Thank you very much.

Ms. Francis: Could I make one more comment?

Mr. Chairman: Yes.

Ms. Francis: I do not know the procedure that would be possible for this group, but I am wondering if it would be possible for the bill to be passed into law and for groups to apply for exemptions, and for those to be considered by a smaller body depending on the kind of process they present and perhaps apply for exemptions under that kind of--

Mr. Jackson: That is a great suggestion. I am glad the chairman did not cut us off completely.

Mr. D. R. Cooke: On an annual basis?

Ms. Francis: Yes.

Mr. Chairman: All right. I have Ms. Gigantes with one brief question and then we will have to terminate this discussion.

Ms. Gigantes: I would like to ask the delegation if they could have further thoughts on the subject, if they could present us with those thoughts as quickly as possible. Unlike Mr. Jackson, I believe we can deal with this matter satisfactorily in the next few days. I certainly hope so. Also, I would like them to think again about shared accommodation as it exists in the private market. Whatever we set up is going to apply to everyone, is going to affect people who share accommodation in the private market, which also exists.

Ms. Francis: How late can we continue to submit briefs?

Ms. Gigantes: We will be meeting next Tuesday on this same bill.

Mr. Jackson: We are done. Today is our last day.

Ms. Francis: Depending on what the Attorney General says.

Ms. Gigantes: Am I correct in my understanding that we meet on Tuesday on this same bill?

Mr. Jackson: This is our last meeting day. That is my understanding.

Mr. Chairman: Apparently, we have not scheduled anything past Monday.

Ms. Gigantes: Before we start scheduling for September or asking for time for September, I think arrangements--

Mr. Chairman: We have already done that. It is already a completed discussion.

Ms. Gigantes: I thought that discussion took place, in terms of the understanding I had when I was last in this committee--I apologise for not having been able to be here because of legislative work--I understood we had one further day of discussion dealing with Bill 42, next Monday, and that Tuesday, necessarily, would then be devoted to the rest of our commitment to Bill 10. That was our original schedule.

Mr. Chairman: Could we perhaps allow this delegation to conclude while we discuss other committee work? We are in the middle of discussing the mechanics of our scheduling, which is not necessarily of interest to this group, other than--

Mr. Jackson: They asked us.

Ms. Gigantes: Yes, it is. It is directly relevant. They asked us when we are going to meet.

Mr. Chairman: --a response, that they wish to get back to us. You did not let me finish. If you had allowed me to finish, you would have heard the rest of what I had to say. I want to thank the delegation for coming before us. If you will just sit for a couple of minutes, after we get some word from the clerk as to the scheduling, you will perhaps hear the details of where we are going from here. Okay?

Ms. Francis: We can probably contact you to find out when the next dates are.

Mr. Chairman: If you wait for a few minutes we may be able to discuss it now. I do not want to get into a lengthy discussion over it now because we are running rather late. Thank you very much for your input on Bill 10. It is very much appreciated.

ORGANIZATION

Mr. Chairman: Can I turn to the clerk for a moment? What is your understanding of our schedule from this point?

The Clerk of the Committee: With the original motion with Mr. Ward for the two extra presentations to be made on June 22, it was my understanding that the committee would then proceed to clause-by-clause. Then, yesterday, the Ontario Federation of Labour requested an appearance on Bill 42 and it was granted by the committee, which exhausts that day. My understanding was that there was no decision any further than what had transpired originally, that the clause-by-clause on Bill 42 would conclude after the deputations. But that leaves 15 minutes, so I do not know.

1620

Ms. Gigantes: Could I go back to the earlier schedule which was that we were going to have two weeks of work on Bill 42 and two weeks of work on Bill 10. We have seriously eaten into the time that was originally scheduled for Bill 10 by extending, first, what was supposed to be one hour, which turned into much more than one hour, of discussion on Bill 42, and then by scheduling another day of work on Bill 42 this coming Monday. As far as I am concerned as a member of this committee, and my colleague advises me he knows of no change in the original schedule, this would mean that Tuesday next would at least be devoted to Bill 10, which would give us the opportunity perhaps of dealing with whatever the Attorney General proposes to bring forward and seeing if we cannot get this work done satisfactorily in this committee by the end of next Tuesday.

Mr. Chairman: I do not think anyone is disagreeing with that--

Ms. Gigantes: Good.

Mr. Chairman: --but we did have a committee agreement with respect to entertaining a delegation from the Ontario Federation of Labour.

Ms. Gigantes: That is fine. That is on Monday.

Mr. Chairman: That is on Monday, which takes up part of that time, I agree. If there is disagreement with respect to the allocation of time, the only thing I can suggest is that the critics for the three parties get together and see if we cannot work out some compromise rather than eat up the time of the delegations that are coming before us now. This discussion can go on for some time. We will not necessarily resolve it. As your chairman, I am quite open to any suggestion that will allow us to move as expeditiously as possible. I am not trying to delay the work of the committee.

Ms. Gigantes: I would like to put a motion and speak to it. I would like to put a motion that our original schedule, agreed to by this committee, be held to in as far as it is possible at this stage. That means we would meet next Tuesday on Bill 10 or whatever form of this issue we are dealing with by next Tuesday. I suggest that because I believe, having gone through clause-by-clause on most of Bill 42, that with the exception of one clause we either do it or we do not do it on Monday.

Mr. Jackson: I have no difficulty with that. My understanding, as it was communicated to me, was that we would not reconvene again on Bill 10 until Bill 42 was completed. I checked the wording of the motion in this committee. Should Bill 42 extend itself for any reason, Bill 10 ran the risk--that was my understanding, based on my conversation with my critic colleague from the third party. If I stand to be corrected, that is terrific because I would like to see this bill completed. However, it was communicated to me that we were completing Bill 42 and could in no way hold Bill 42 to complete Bill 10. That was the way it was explained to me. If we are now able to hold Bill 42 to complete Bill 10, I am delighted to hear it. However, if for any reason Bill 42 proceeds past Monday, then the first item of business on Tuesday is going to be Bill 42. Is that not your understanding, Mr. Chairman?

Mr. Chairman: That was the way I believe the committee minutes read.

Mr. Jackson: That is all I was saying.

Mr. Chairman: I am going to go to Mr. Charlton in a moment. I would again remind you that we have delegations invited to be with us this afternoon. I think they take precedence over anything we are discussing at the moment. I recognize it is a problem. We can get back to any groups that require the input of further information to the committee. I appreciate the dilemma they might find themselves in. Could I ask the committee members to restrain themselves in terms of remarks now so that we can get on with this. We are now 22 minutes late.

Mr. Charlton: I have just a very brief comment. My understanding of the motion last week was that we would return to presentations and discussion of Bill 42 on June 22. I do not recall any discussion in that motion about extending beyond June 22.

Mr. Chairman: All right. We have a motion from Ms. Gigantes. Would you repeat the motion and I will ask for a vote on it.

Ms. Gigantes moves that the committee deal with Bill 42, hopefully complete it on Monday, and notwithstanding what happens with Bill 42, move to Bill 10 on Tuesday.

Mr. Jackson: For clarification, if Bill 42 is not completed on Monday, we start Bill 10.

Mr. Chairman: That is right. I want to remind the committee, and the clerk will correct me if I am wrong, with the schedule we have on Monday and with the additional delegation we have already voted to hear, it would leave approximately 15 minutes for the completion of Bill 42 on Monday.

Mr. Charlton: There is one section to deal with.

Mr. Chairman: I understand that but it is the most controversial section and one that may not be resolved all that quickly. I say this not with any intent to direct you on how to vote, but simply to advise you of what we are in, in terms of the present dilemma.

Motion agreed to.

LANDLORD AND TENANT AMENDMENT ACT
(continued)

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

Mr. Chairman: We can move on to our second delegation, Regional Realty Ltd. of Ottawa. We have the senior vice-president, Jeff Gould, in attendance with us. Perhaps Mr. Gould would introduce the rest of his delegation.

Mrs. Sedgewick: I will make some corrections. My name is Mary Sedgewick. I am the executive director of the Fair Rental Policy Organization of Ontario. A member of our organization is Regional Realty Ltd. Jeff Gould could not be here today to make the presentation, so I am going to make it on his behalf. With me is James Hoffman, who is also a director of the Fair Rental Policy Organization and a member of the Advisory Committee on Roomers, Boarders and Lodgers.

One of the authors of this report I am going to give you today was also

a member of the Advisory Committee on Roomers, Boarders and Lodgers. Should there be any questions regarding it, James will be able to deal with them.

Mr. Chairman: Let me welcome you. Thank you for the clarification as to who is here on the part of your delegation. Whenever you are ready, you may begin your submissions to the committee.

Mrs. Sedgewick: Regional Realty Ltd. welcomes the opportunity to appear before this committee and present this brief.

Regional Realty Ltd. is appearing before this committee in its capacity as property managers for Rideau Chapel Towers, which is Ottawa's largest rooming house complex.

Rideau Chapel Towers is a two-tower, mixed-use development containing commercial uses on the ground floor, approximately 520 rooming house units with each five-unit cluster sharing washroom space and just over 200 self-contained apartment units in a separate tower serviced by common elevators and sharing laundry and lobby space. Based on the city of Ottawa's own estimates, Rideau Chapel Towers is the largest rooming house in the city and currently represents over 20 per cent of the city's legal rooming house stock.

During our eight years of management of this unique project, and I would hazard to say there is nothing quite like it anywhere in Ontario, our company has gained some insight into both the changing tenant base that is occupying our units and the type of management that is required to effectively manage and control a project of such magnitude. As such, we are very concerned about the possible adoption of Bill 10 in its present form. It is our humble opinion that Bill 10 is an overly simplistic response to a very complex problem that requires action on many fronts.

While we agree with and support legislation to provide natural rights and protection for roomers and boarders, we also recommend that you, as legislators, turn your attention to the equally important issues of developing programs and policies that would increase the supply of suitable and affordable accommodation and of developing a comprehensive program of portable support services to deal with the increased number of ex-psychiatric patients and other individuals in need who are increasingly becoming a larger percentage of our tenants.

Over the past eight years we, as managers of Rideau Chapel Towers, have noted a dramatic change in the composition of our tenant base. When we first assumed management of the building in 1979, the majority of our tenants were either students or the working poor. Now the majority of our tenants are singles on welfare and/or ex-psychiatric patients from the Royal Ottawa and Brockville catchment areas.

Regional Realty Ltd. has a long history of corporate involvement in the community and we are committed to being the good corporate citizen and meeting our community responsibilities. As such, we have never turned our back on any individual who required housing. For example, even when vacancies in Ottawa approached the zero per cent rate, we entered into special arrangements with the regional social service department to block lease units in Rideau Chapel Towers to house individuals in emergency situations. We are concerned, however, that the proposed changes to the Landlord and Tenant Act proposed in Bill 10 will not allow us the flexibility to manage this unique project and

this in turn will impact on the type of tenants we will allow in the project in the future.

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Specifically, there is one area that gives us great concern with respect to the proposed amendment, and that is something which is not there. That is the process of quick remedy for intolerable situations. We feel that the current remedies available to both the landlord and tenant will be totally ineffective in the short-term tenure of roomers, boarders and lodgers.

As you are aware, the current act provides legal redress, but that process is very slow, taking on the average some 41 days. While this time period may suffice for tenants and landlords in more conventional tenancies, it could be intolerable in a rooming house situation. For example, put yourself in the situation as a serious student in one of our rooms who is attempting to do an assignment or study for a mid-term. Next door, you have a person who has taken a turn for the worse and has decided to bang pots on the wall incessantly all night. How long could you put up with this situation before you are affected? One day, two days at the most, but definitely not 41 days. In the past, we have been able to rely on the police department to help us with this type of situation. However, with the advent of the human rights legislation in Canada, the police in Ottawa are very reluctant to get involved in resolving these types of situations.

As such, we ask that a form of quick remedy for intolerable situations be included in the amendment and that it be made available to both landlords and tenants. To be effective, the time frame should be no longer than 48 hours.

Although it does not affect our operation, we would also like to take this opportunity to suggest that the proposed Bill 10 exclude certain sizes of facilities by way of definition where services to residents other than basic meals and shelter are provided. This would also include shelters for transients, retirement homes, rest homes, and hotels and homes for special care. Exclusions should also be provided for those in homes when owners rent out rooms in their houses. To do otherwise would likely create more problems than the proposed legislation would solve.

Thank you for the opportunity and I trust these comments will be helpful in your consideration of the issue.

Ms. Gigantes: Thank you for your presentation. How many times would Regional Realty Ltd. have had to have recourse to an eviction process during an average year recently?

Mr. Hoffman: We are just presenting. We do not have any working knowledge of day-to-day activities and management problems. I am sorry.

Ms. Gigantes: Would you find that out for us? I think it would give us a sense of what the market you are speaking of is like.

Mr. Hoffman: The question you are asking is the frequency of eviction proceedings and things of that nature, and a breakdown of the types.

Ms. Gigantes: Yes, and if there are interventions by the police, would this be happening--I do not know if you are familiar enough with the property to be able to answer these questions.

Mrs. Sedgewick: Now?

Ms. Gigantes: Yes.

Ms. Sedgewick: No. What we would like to do is take them down and then get a response for you.

Ms. Gigantes: That would be helpful. If the police are asked to intervene in a situation where somebody is banging pots on a wall, for example, or where there is some threat to another person or some act that makes the situation intolerable in the view of other tenants, boarders or management, I would like to know in how many cases the request for intervention by the police would be made and how many cases would not be satisfactorily dealt with from the point of view of the operation of the building as a whole.

I am wondering whether one can compare the kind of situation that exists in a building such as this one in terms of the time that would be involved in a motion under the act to the processes of the act involving an ordinary rental apartment.

Mr. Hoffman: Could you clarify that?

Ms. Gigantes: Is it going to take as long for a process under the Landlord and Tenant Act to be applied in this kind of situation?

Mr. Hoffman: It would be my guess that it would take longer because obviously you are including a whole new component of tenants now in the Landlord and Tenant Act. With the court situation the way it is, it takes 41 days for those intolerable risk situations at the moment under the Landlord and Tenant Act.

Ms. Gigantes: If there is an intolerable risk, that is the kind of situation where--

Mr. Hoffman: I would not call it intolerable risk, intolerable being one and risk situation being another.

Ms. Gigantes: In here, are you thinking of the "reasonable enjoyment" section of the Landlord and Tenant Act?

Mrs. Sedgewick: The intolerable part could be the banging of the pots on the wall, for example. That is not necessarily a health risk, but that is intolerable to the other tenant.

Mr. Hoffman: Are you asking for our definition of "intolerable"?

Ms. Gigantes: No. What I am trying to figure out in my own mind, and perhaps you can help me on this, is when a question of a nuisance such as this that inflicts on other people becomes a matter of disturbing the peace and becomes a question not dealt with under the Landlord and Tenant Act specifically, but as an incident, relates to other legislation. The same thing can happen in an apartment building.

Mrs. Sedgewick: I think maybe the nature of the actual tenant in this particular building is what makes the bringing in of the police necessary at certain times.

Ms. Gigantes: You are not going to tell me that most psychiatric patients end up in these kinds of living quarters. They do not. Most psychiatric patients go home to their own homes. They may be living in apartment dwellings. If somebody in an apartment building, either a psychiatric patient or somebody who has never been near a psychiatrist, bangs on the wall with a pot incessantly for three or five days, then it becomes a question of more than the Landlord and Tenant Act. It is an aggressive act that can be dealt with under other legislation.

Mr. Hoffman: Eviction or stopping the noise?

Ms. Gigantes: Stopping. I do not know what your experience has been in managing other kinds of properties, either rental properties that are not--

Mr. Hoffman: Let me just back up for a moment, if I may. We have heard in the submission by Regional Realty that since 1979, they are finding a change in tenants. Where at one time there may have been students, there are now a high percentage of ex-psychiatric patients, those perhaps requiring some form of care beyond just providing accommodation.

They have also indicated here, which has come out of the Attorney General's office, that under the Landlord and Tenant Act at the moment for conventional apartments, for those situations designated "intolerable" and "risk," it takes 41 days to get a court order or an injunction. One would have to believe that with Bill 10 as it is proposed at the moment, now that we are increasing that spectrum of tenants, and certainly with the court time and everything else, if the Landlord and Tenant Act stands as it is, it is not going to be less than 41 days.

Ms. Gigantes: But it is a situation that can be dealt with under other legislation beyond the Landlord and Tenant Act. The Landlord and Tenant Act provides management with an ability to give formal notice and to ask the tenant to leave the home, but if there is a risk situation, we have all kinds of other legislation that deals with risk situations.

Mr. Hoffman: Risk situations, but perhaps you would still find that individual tenant residing there. Is that not correct? Under any other form of legislation, they would not be evicted. Is that correct?

1640

Ms. Gigantes: That is correct, but if you are dealing with a risk situation, you do not have to call upon the Landlord and Tenant Act to deal with the risk situation.

Mr. Hoffman: One of the areas would be relativity of risk and interpretation of risk. If you are talking about risk to life to another tenant, you have one route. If you are talking risk in terms of facility, I guess you have another route. Still, the basic problem exists: eviction. If it gets to the point where you have an intolerable situation, under the Landlord and Tenant Act and under the proposed Bill 10 you are faced with a longer period than 41 days for eviction, period.

Ms. Gigantes: I would like to make a clear distinction between a risk situation and what you designate as an intolerable situation, which is the disturbance of somebody's quiet enjoyment.

Mr. Hoffman: There is a variety of risk situations that an

individual could present for others. There could be a health risk, risk to the health and welfare of other tenants in general.

Ms. Gigantes: This is all very nonspecific in my view when you describe it that way. Legislatively, we try to deal with threats of violence, with violent acts and so on, and we do not do it normally under the Landlord and Tenant Act. We make a provision in the Landlord and Tenant Act for the eviction of a tenant who has demonstrated a risk. We make a provision under the Landlord and Tenant Act for the eviction of a tenant who has created a loss of quiet enjoyment for other tenants. But I do not think we look upon the Landlord and Tenant Act as our way of dealing first and foremost with risk situations. Certainly, there is legislation that prevents people from becoming a public nuisance, that prevents people from--what are the other terms that are used?

Mr. Hoffman: To clarify, perhaps you could give me an example of what recourse exists and whether that involves eviction in less than 41 days.

Ms. Gigantes: Causing a public disturbance: People are arrested for causing a public disturbance on our streets. They can be arrested in places that are shared by other members of the public for creating a public disturbance.

Mr. Hoffman: That does nothing for the landlord in terms of evicting a tenant who is consistently generating these situations, though, does it?

Ms. Gigantes: No, the landlord would have to take such an incident as cause for notice. That is correct.

Mr. Hoffman: Again, you are missing the point. It is 41 days, as it exists at the moment, to even get a landlord who is infringing dramatically on the right of a tenant to enjoy his premises--there is no recourse that is less than 41 days under the Landlord and Tenant Act for a tenant to get a landlord to stop something. It is a provision that is being recommended by an individual or a group of people who have the largest rooming house in Ottawa.

Ms. Gigantes: Yes, I am aware of that.

Mr. Hoffman: They are saying that this is a necessary aspect to running and maintaining a building and an operation that they have been proud to do to date.

Mr. Chairman: Ms. Gigantes, I am going to ask you to sum up, if you would. I have others waiting to ask questions and we are running out of time.

Ms. Gigantes: The notice that has to be given under the Landlord and Tenant Act is 20 days in the minimum amount.

Mr. Hoffman: We, unfortunately, are dealing with the real world. You can issue a notice in 20 days, but if it takes so many other days to get a court date then--

Ms. Gigantes: I understand the practical problems that surround that.

Mr. Jackson: It strikes me that there is a clear distinction on this risk factor. You are now the fifth group that has identified the concept of

risk. Many have used the case of violence to other tenants by tenants as the issue at point.

It strikes me that we have a unique situation with roomers and boarders in that they share a common area. For the police to get involved--in many cases, in, say, a regular apartment building, you can go behind your door and lock your door. You are subjected to an inconvenience, but the risk factors to health and safety are minimized in that environment. This is not necessarily the case in a rooming-boarding situation, where the facilities could be the common area. The cooking area could be the common, shared area. Therefore, when a threat to life is proposed, the police are involved in behaviour modification but in no way does that provide the security of your accommodation. To me, that seems the area that I understand private and nonprofit groups alike are focusing on, this area of risk. Do you wish to comment about that?

Mr. Hoffman: Your assessment of the situation is accurate and that is why you see proposals coming forward to the legislative committee hearings for consideration on these kinds of situations. I would have to say your assessment is correct.

Mr. Jackson: We are seeing the same point about not going to the police. It has been suggested--experientially, they are saying that the police will come in and talk to people, but in no way does that remove the risk. It deals with behaviour modification, threats and the possibility they can even haul them off, but they eventually come back to their same unit.

The other question I have is with respect to page four where you refer to "a form of quick remedy." Could you expand on that? Do you perceive something in the current--our previous deputant talked about what the process would look like. They felt they should have part of the ownership in the deciding of it because they have internal regulations, as a board, for their nonprofit housing corporation.

Do you have any ideas or did Mr. Gould have any ideas, when drafting the report, with respect to the form of the model? Is it increased access to a court system? Is it an independent tribunal that you have access to as a quasi-judicial body? What is envisaged or suggested?

Mr. Hoffman: I guess the industry, and Regional Realty in its presentation, would not have given a great deal of thought to the actual process. I would say, in principle, that what they mean by "quick remedy," what we all mean by "quick remedy," is that within a 24- or 48-hour period a tenant or a landlord can, by red-flagging his problem, get into the courts extremely quickly.

Obviously, this introduces a tremendous amount of potential abuse to a system. The penalties for someone red-flagging a situation as intolerable, a risk situation, and tying up the court's time in getting in there for a quicker judgement or order--there would have to be some provision for abuse. I suppose the industry has little patience with the current system that exists, with the time lags and everything else in getting into the system.

If you are going to consider legislating this industry, changes are going to have to take place. The industry feels, in some respects, that it really is not its place to start getting into the system and making recommendations. This is a need that I think will have a dramatically adverse

effect on the supply, on the management of these operations, if these considerations are not accommodated for in the court process.

Mr. Jackson: This is my final question. Are there cases where tenants have indicated that their treatment by their landlord is such that access to the courts would represent a benefit or is quick remedy deemed to be inappropriate from a tenant's point of view? We have identified the issue of risk between tenants with respect to violence or threatened violence, but what about the treatment of a tenant by a landlord? We are talking about potential for abuse here.

Mr. Hoffman: In the sense of fairness, I would rely more on logic and a sense of fair play. I would think from a tenant's perspective that it would be totally intolerable to have to wait 41 days to get a court injunction or an order to stop a landlord from doing something that was infringing on the ability of that tenant to enjoy the premises he is paying for, any act of locking a tenant out for nonpayment. As in a submission that was made by the Fair Rental Policy Organization of Ontario, 30 per cent of the rooming house population is on some form of social assistance and with no permanent residence they do not qualify for assistance. It seems to me that in the sense of fair play, they should have as quick a remedy for those situations, unfortunate as they may be, where they have an unscrupulous landlord.

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Mr. Chairman: I will take this as the final question, Mr. Partington.

Mr. Partington: Are you satisfied to leave it up to the court to determine what is intolerable and what is not? Do you have a definition of "intolerable"?

Mr. Hoffman: No, it is relative. As a landlord, I would be happy with the court's rendering of what is intolerable. I would like to think we could use our own judgement and that if we found when we got in there that it was not deemed to be intolerable or a risk situation, there would be some form of penalty assessed.

Mr. Partington: Clearly nonpayment of rent is not intolerable in your definition?

Mr. Hoffman: On average, no. If it happens 12 months in a row and they are consistently 30 days late with it--you have to recognize that the rooming house industry is made up of a lot of 13 or 12 units. A loss of revenue in that form may adversely affect the operation of some of these smaller people.

Ms. Gigantes: Can I just note for the committee's information that Regional Realty provides, through this building, a large number of the rooms that are left for public use in Ottawa, but it is also the largest single operator of all rental units in Ottawa.

Mr. Chairman: Thank you very much for your interesting submission. We appreciate your coming before the committee and sharing your thoughts with us. I apologize for the lateness of the hour. The next delegation is Open Door Centre and Rooms Registry Service Inc. I ask Mr. Morris, I believe, to come forward. He is the executive director. This is exhibit 15. Let me welcome Mr.

Morris to the justice committee. We look forward to hearing from you, sir, as to your comments with respect to Bill 10.

OPEN DOOR CENTRE AND ROOMS REGISTRY SERVICE INC.

Mr. Morris: On behalf of the Open Door Centre and Rooms Registry Service Inc. and the people we were created to serve, I would like to thank you for giving us the opportunity to sit before you today as a deputant. I understand that we are 22 and a half minutes behind, so let us get on with the deputation.

The deputation goes through two main areas. It looks primarily at our perception of the issue of supply and what has happened with the deterioration of affordable housing stock, in Toronto primarily, and also at the need for legal protection for roomers, boarders and lodgers in this province. Finally, it concludes with some personal observations from myself, being a landlord with roomers in my own home.

Between 1976 and 1986, the number of serious queries for low-cost rental accommodation received by the Open Door Centre and Rooms Registry Service has quadrupled, from 800 persons seeking permanent, affordable housing in 1976 to nearly 3,200 individuals seeking the same in 1986. During that period, however, the percentage of persons able to access an affordable unit through the organization decreased from a 1976 success rate of 80 per cent, 640 out of 800, to a dismal 37 per cent, 1183 out of 3197, in 1986.

According to statistics compiled by Open Door and verified by the city of Toronto planning department, over the past 10 years an average of 2,000 affordable rooms and apartments have been lost each year to gentrification and demolition in Metropolitan Toronto. When one combines this 20,000 plus lost unit figure with the fact that literally thousands of single persons from the economically depressed eastern and western regions of Canada have ended up homeless and broke on our Toronto doorstep, one needs little imagination to understand why an affordable housing crisis exists in Metropolitan Toronto. In fact, report after report states that over 7,000 room-and-bed units have not been replaced even though the provincial government, working with federal funds and using local initiative programs, produced over 30,000 low-income units during the mid-to-late 1960s and nearly 4,000 more low-income units since the early 1970s.

While lack of affordable unit replacement, due in part to private sector reluctance to develop low-rental supply, exacerbated the crisis, ambiguous housing policy and law reform for the low-income singles population escalated the crisis into emergency proportions.

Consequently, while "no vacancy" signs dot the urban landscape, many members of the low-income singles population, in order to remain close to familiar neighbourhoods and essential services, pay illegal rent increases for substandard accommodation in overpriced, unsafe, nonhygienic and in certain instances illegal rooming, boarding and lodging facilities.

For the first quarter of 1987, Open Door records indicated an across-the-board price range for a three metre by three metre, vermin-infested dwelling room of \$90 to \$150 per week. Many roomers, boarders and lodgers have added their names to waiting lists for subsidized housing. The Metropolitan Toronto Housing Authority, for example, has a four-year-waiting list; Cityhome's is three years. But as is most frequently the norm in any high-priced home ownership market, without clarity of legislative protection,

roomers, boarders and lodgers have found themselves evicted and forced to join the ever-increasing ranks of the 10,000 plus homeless roaming the streets of Toronto the Good.

For purposes of brevity, I will not delve into the countless other factors contributing to the housing-homeless state of emergency. However, some, if not most factors would be alleviated with the implementation of recommendations within the recently released Ministry of Housing studies on roomers, boarders and lodgers in Ontario--the Dale Bairstow report and the advisory committee report. Differences between the two reports aside, most recommendations will bring about much needed change for these interrelated constituencies in housing policy and law reform.

With regard to the latter, there is an urgent demand for clarity around the definition of tenant within the Landlord and Tenant Act. According to our records, for the month of May 1987, 137 roomers were or are in the process of being evicted from 26 Lansdowne, 261 Gerrard East, 17 Homewood, 209 Carlton, 328, 330, 331, 332 and 333 Dundas East, 433 Ontario and 423 Sherbourne because the properties were sold with a vacant-possession-on-closing-date clause written into each of the respective agreements to purchase. At present, one or two appeals are in process, but without clarification of the tenant definition within the Landlord and Tenant Act, there is little legal ground for those who are defined as "licensee" to stand upon.

To date, with legislative support not unlike sinking sand, this cross-section of low-income elderly, disabled and single-parent population will have no other recourse than to become reluctant members of the disturbing presence that is already crowding Toronto's sidewalks and shelters, and which feeds into that downward spiral of nonproductivity and dependency, not productive self-sufficiency, trademarks of healthy neighbourhoods and, at root, a healthy Ontario.

Said notion of a province, all spic and span, brings me, finally, to a brief footnote of a personal professional nature. Today I sit before the committee as a bona fide "Mrs. Murphy," or should I say, "Mr. Morris." I lease out a portion of my home to two roomers. I share all common facilities including the kitchen and washroom with a cat, a dog and my two tenants. I underline the word "tenants" for one simple reason. According to our leasing agreement, the two roomers are tenants covered under the Landlord and Tenant Act. I have not had any difficulties with any of my tenants, probably because I screen prospective tenants carefully and caringly. To date, although my tenants have comprised a delightful mix, I have never perceived myself nor my property to be in any danger from a knife-wielding, drug-or-otherwise-crazed biker, hooker or pimp roomer, boarder, lodger--take your pick. In my limited experience, this stereotype of a roomer, boarder or lodger is very much the dark exception to the rule.

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In this specific case, then, it would seem that with one's full right to a home, which includes, does it not, adequate legal protection, comes a certain degree of mutual accountability and responsibility, not to mention respect for and with each other in any given home. I am, however, just one of the many Mrs. Murphys and Mr. Morrises in Ontario, but I dare say there are other Mrs. Murphys, Mr. Morrises, even Ms. McGillicuddys, in Ontario with a perspective similar to my own.

Therefore, this owner-occupant and this organization urges the standing

committee on administration of justice to approve immediately Bill 10--recommendation 6.2 of the Dale Bairstow report--and urge the Legislature to enact the bill into law before the summer recess. This change in provincial legislation, albeit a small but significant segment of the definitive solution to the housing-homeless crisis, will publicly declare to our sisters and brothers who are citizens in other provinces and countries that Ontario is committed to moving beyond the rhetoric of reports, committees and good intentions that die on the floor of the Legislature.

There can be no finer way for all three parties to express their commitment during the International Year of Shelter for the Homeless than to enact immediately such a fair, just and humane piece of law reform for a large part of the tenant population who have been locked out for too long.

Mr. Chairman: Thank you very much for a very interesting and informative submission.

Mr. Jackson: I would like to echo those sentiments as well. It is a well thought out brief, but I do wish to raise some questions about the statements you make on page 4.

Mr. Morris: Certainly.

Mr. Jackson: You refer to a lease agreement for you as the landlord of a rooming house which, in your mind's eye, I understand you perceive as a self-contained unit or a landlord tenancy under the Landlord and Tenant Act.

Mr. Morris: That is correct.

Mr. Jackson: You perceive it that way and you have every entitlement to do that, but do you have a formal lease agreement that you sign with your tenants, albeit roomers and boarders?

Mr. Morris: That is correct. It is a standard agreement that I had assistance with from Neighbourhood Legal Services, which is one of the local community-based services here in Toronto. It is really a standard agreement that is renewable each year.

Mr. Jackson: Since you are continuing it, it is working well for you.

Mr. Morris: So far, yes.

Mr. Jackson: You also go on to say, "I screen prospective tenants carefully and caringly." That would imply to me that there is an element of judgement with respect to those tenants to whom you would rent out your room.

Mr. Morris: I understand to date you have had some excellent deputations from other nonprofit, church-related agencies and organizations in Toronto, some of which are Homes First Society, which was here earlier today, Toronto Christian Resource Centre, Fauhoms, Good Shepherd Refuge and so on. Initially, before the housing crisis got to the crisis proportions that it has reached at present, those nonprofits who are dealing in the housing industry were working with people who were hard-to-house persons.

Since the housing crisis has occurred, there is a large number of people, perhaps like yourself and myself, who have had bad breaks and find themselves in a difficult rental climate, unable to find appropriate accommodation. Similar to any other businessman or individual doing an

interview process, one would naturally assume that one would take whoever would be most compatible with oneself in the housing arrangement.

For example, two years ago when the last individual left, I had 350 people apply. It is pretty disheartening to have to say no to so many. All were pretty well able and equipped. At present, I do not have anyone who has a history of psychiatric difficulties, other than perhaps my own self trying to cope in a downtown organization with people who are overworked and underpaid, etc. Stress levels are pretty high. For that reason, I really think that in looking at a judgemental aspect of renting or leasing out in any arrangement that anyone has, it is no different from being involved in a business and interviewing a person for hire, perhaps your own executive assistants and so on. I hope that answers your question, Mr. Jackson.

Mr. Jackson: It does. It is difficult to probe more deeply in the area of questioning that we are now engaged in given the spirit in which you have made your presentation and the conviction and commitment with which you apply your unique housing opportunity in your residence. However, we do not normally come up against an individual of your calibre with respect to offering that kind of tenancy. I would like to pursue this line of questioning further without any embarrassment.

Unfortunately, the situation exists. There are laws in this province that prevent a landlord from making those judgement calls, whether they are based on caring, compassion or whatever. In fact, we had a recent series of amendments under Bill 7 that removed some discriminatory accesses for persons in Ontario.

Ms. Gigantes: In this situation, the landlord is sharing this accommodation.

Mr. Jackson: I am leading to that question. We have established that the landlord is in a position to determine the appropriateness or inappropriateness of a given tenant. He is in a roomer-boarder situation. He is suggesting that he is applying all the elements of the Landlord and Tenant Act to his situation and he is predicated that on his ability to screen his tenants.

Ms. Gigantes: Yes, that is permitted under the Human Rights Code where the landlord shares the accommodation.

Mr. Jackson: I fully understand that and I consider it rather complimentary to the gentleman that he is operating in such a manner and willing to do so. However, he is suggesting that--I am leading to a question, which the chairman was going to ask me to do anyway, with respect to amendments for persons who live in their residence and provide accommodation. I actually have tabled a bill that provides an amendment, in other words an exemption, for people like yourself. I am going to ask you if you support that kind of an amendment, but I think I already know the answer since you are saying you are fully prepared and willing to accept Bill 10 in its current form.

Mr. Morris: Yes, that would be the next step in the dance, to look at exemptions down the road. It would be interesting for a study to be done, Mr. Jackson, on whether there are people in similar situations to myself. Having been brought up in rural parts of Ontario, I would hazard a guess that there are other people such as myself who find themselves in similar situations, for whatever reason, of sharing their common facilities with

roomers, boarders or lodgers, but it would be interesting to do a study to try to substantiate those studies.

Mr. Jackson: The studies exist. If you read Bairstow, he makes specific reference to the exemption. In fact, he goes on to report--

Mr. Morris: But how many people would be in agreement with that recommendation, or for that matter, the difference that the advisory committee comes up with in its exemption number. I think it is very interesting.

Mr. Jackson: Just for your own information, the advisory committee has advised that there be an exemption for people like yourself. Bairstow made the recommendation that there be an exemption for people like yourself--situations; I should not say for people.

Mr. Morris: --the number.

Mr. Jackson: That is fine. We are going to get into that, but I am just asking you for the basic exemption. Your statement clearly sets out that there is no need for an exemption. Okay? This is rather unique as a presentation before this committee. I dare say it is the only presentation we have seen in that regard.

Mr. Morris: Is that right?

Mr. Jackson: That is correct. Finally, all the provinces in Canada that have the roomer-and-boarder inclusions in their landlord and tenant acts have the exemption for situations such as the one you have. I wonder, seriously, if it would not have an adverse effect on the supply side of that kind of necessary and essential housing if we do not include that exemption with Bill 10.

1710

Mr. Morris: At present, I think the issue at hand is not so much--supply is going to continue to deteriorate. To get this bill into law before the summer recess is crucial. I am finding that just in the little area surrounding our agency there has been a tremendous deterioration of the supply of rooming house stock. You are well aware of that--

Mr. Jackson: Very much.

Mr. Morris: --throughout urban centres in Ontario. I think that to give at least that first step where tenants will have the opportunity to ask for injunctions is very crucial at this point, especially on the Toronto supply side.

Mr. Jackson: In conclusion, I merely wish to state that even my coterminous Housing critic in the third party has indicated that the amendment I have tabled would not represent a delay with respect to the quick and necessary passage of Bill 10. There has been public acknowledgement from several quarters that passage of Bill 10, in the absense of that, would have a more immediate effect on the supply side; in other words, reduced access to that kind.

In my statements in the Legislature, I made reference to situations outside Toronto where the housing network for adolescent youth in difficulty. Their whole source of supply is in rooming house situations and the condition

is that they not be part of the Landlord and Tenant Act. I merely wish to state that I do not wish you to connect this one exemption, which virtually everybody agrees is appropriate, would in any way be connected with the delay of the bill.

Mr. Morris: Thank you for clarifying that.

Mr. Jackson: Thank you for your presentation.

Ms. Gigantes: I am not at all sure that Mr. Jackson has convinced me on this point. Maybe I need to have --

Mr. Jackson: I do not have to. Your critic indicated that he had no difficulty with it. He made that statement in the Legislature. If you wish to upset the hearings, that is your business.

Ms. Gigantes: I can consider whether I agree with your point of view and his, as you reported.

Mr. Jackson: Or your critic's, for that matter.

Mr. Chairman: We will have time to go into that, as the committee knows, when we go through clause-by-clause to debate the bill.

Ms. Gigantes: Could I ask Mr. Morris something very quickly? I really appreciated your presentation. How long have you been in the landlord situation?

Mr. Morris: Just two years. I am also president of Houses Opening Today, which is working through Project 3000 to put in place 25 units as well. This is new for me. That is why I am saying "within my limited experience."

Ms. Gigantes: How many tenants have you had?

Mr. Morris: In that period of time?

Ms. Gigantes: Yes.

Mr. Morris: Three.

Ms. Gigantes: Has there every been any reason why you felt the Landlord and Tenant Act should not apply in your situation?

Mr. Morris: No.

Ms. Gigantes: We just had a presentation on behalf of a large rooming house operation that is part of a very much larger private rental organization in the city of Ottawa, Regional Realty Ltd. They say that because of shared facilities and the problems that can arise in shared facilities, there simply has to be some kind of special measures built into a situation where somebody may decide to be a disturbance or somebody may make threats against another boarder. Did you hear that presentation?

Mr. Morris: Yes, I did.

Ms. Gigantes: Have you been aware in your work of any similar kinds of developments and any problems that you see that would demand a different

kind of treatment for such operations than for a large apartment building, for example?

Mr. Morris: I think there have been, in the area of work I have been involved with, issues around security of occupancy and security of tenure. I will not get into that here because I do not think we have the time. However, there is concern with whether the Landlord and Tenant Act is biased in favour of landlords or tenants. I am not going to argue that here right now.

I think the important thing is to realize one troubling comment that this gentleman here made previous to my deputation. He said that 41 days would be the process for tenants to be able to seek adequate recourse to the LTA. I am looking at the other side. Actually, I think--please correct me if I am wrong--tenants do have the opportunity to move through an injunction at that point which speeds up the process in the long term.

Ms. Gigantes: That is correct.

Mr. Morris: There are instances I have been aware of where tenants have used the system to their advantage. In the short term, that has been disruptive for the community, but I think it has served to strengthen the kind of stability in particular houses or groups in the long term. For example, the Homes First Society has changed from being antagonistic towards Bill 10 to now being supportive of that bill. In the long term, which is what we are looking at, long-term permanent accommodation for ourselves and for others is what is at issue here with Bill 10.

Mr. Chairman: Thank you very much for patiently responding to our questions and, as I indicated earlier, for a very interesting submission. We appreciate your coming before us this afternoon.

Mr. Morris: Thank you very much for the opportunity.

Mr. Chairman: Members of the committee, I believe that is a quorum bell. The earlier one was a quorum bell and--

Interjection.

Mr. Chairman: I did not know that that necessarily related to a quorum bell.

Mr. D. R. Cooke: They usually count--

Mr. Chairman: The next delegation we have is the Ontario Real Estate Association. We would ask the delegation to come forward. We have Jim Cathcart, senior vice-president, and Barrie Doyle, director of communications, if I have the names correct, gentlemen. We are pleased to have you here with us. We welcome you to the justice committee discussions on Bill 10, and any subsequent amendments that may occur as a result of the discussions we have that can be added to Bill 10. You can perhaps introduce yourselves and get right away into your submission before the committee whenever you are ready.

ONTARIO REAL ESTATE ASSOCIATION

Mr. Cathcart: I want to thank you for giving us the opportunity to appear before you. We hope we can serve a useful purpose. I am Jim Cathcart,

senior vice-president, and Barrie Doyle is executive director of communications for the Ontario Real Estate Association.

The Ontario Real Estate Association is an organization representing nearly 40,000 real estate brokers and sales representatives in 48 local real estate boards across the province.

Our interest in housing and landlord and tenant legislation goes back to the introduction of rent controls in the mid-1970s. Our position all along has been that those who most need housing assistance are not being helped by the current legislation, but that rather they are being hurt. We are referring to those on single incomes or fixed incomes who cannot find affordable rental housing in the city of Toronto. This is an unfortunate situation and one that must be addressed.

Our first choice would have been to see the existing rent control structure removed and various direct subsidies for those in need introduced.

However, the Legislature has accepted the concept of legislation for this issue and has set controls in place. Given that situation, we can certainly understand the thrust of Bill 10 to extend some form of protection to those who should have been aided in the first place by rent controls.

We believe in, and have long supported, the concept of fair and adequate housing as a basic natural right of the citizens of Ontario. And we recognize that not everyone wants, or can afford, to purchase a home. Thus, tenancy situations are a major player in the Ontario housing mix and must remain so.

It goes without saying that in such situations, fairness and equitable treatment are essential and that responsibilities for such fairness and equity rest with both the landlord and the tenant.

We echo the views of the Fair Rental Policy Organization of Ontario, which noted that the problem in Ontario is not shortage of legislation, but in fact is a shortage of supply.

The ultimate solution to tenant problems with landlords and vice versa will lie with an increase in the supply of affordable rental accommodation and where a tenant is given real choice in his or her selection of housing.

With that in mind, the Ontario Real Estate Association approaches Bill 10 with caution. We applaud the aim of the bill, which is to provide protection for certain situations by extending the provisions of the Landlord and Tenant Act to roomers and boarders.

But we reiterate our belief that legislation, if necessary, must be addressed to meet the needs of all segments of those being affected and not just one. Bill 10 seeks to extend the provisions of the Landlord and Tenant Act, but it seems to us that it is designed to address a situation that is primarily oriented to Toronto, where such rooming and boarding situations are an essential ingredient in the rental housing mix.

1720

Outside Toronto, the need for such housing and the need for Bill 10 protection diminishes. We note the Bairstow report addressed itself to this problem, but the Bairstow report, while supporting extension of protection to

roomers, boarders and lodgers generally, still recognizes that not all such housing arrangements need legislative protection.

The report notes on page 78 that, "Section 2 of the Landlord and Tenant Act and regulation 547 should be amended to add the following classes of accommodation deemed not to be residential premises for the purposes of the act." The report then cites one outstanding example, "Private homes in which the owner is an occupant and which are accommodating four or fewer boarders or lodgers, regardless of physical arrangements."

Outside the city of Toronto, we suspect that the bulk of roomer, boarder or lodger housing will be found in such situations as Bairstow has identified. Senior citizens, for example, seeking a means of creating a small income to supplement their pensions and yet keep their family home, take in boarders or roomers. This is not the average landlord-tenant situation and surely it is not the target of Bill 10.

The Ontario Real Estate Association, and indeed all Ontarians, applaud legislation that is fair and equitable to all parties. If Bill 10 were to proceed unamended, we believe that such fairness would be upset and, in fact, would cause a great deal of damage. If Bill 10 becomes law, we believe that many private home owners will lose a source of secondary income, preferring to give up their rooming arrangements rather than comply with the onerous responsibilities and red tape of the Landlord and Tenant Act, an act which, we would remind you, is largely aimed at multi-unit residential buildings and high-rises where landlords are in the business of providing rental accommodation.

We also believe that if Bill 10 is enacted and home owners close their doors to lodgers and roomers, it will create a housing crisis for those roomers left out in the cold. We would remind you that this bill will be enacted across all Ontario and not just across Toronto.

To put it bluntly, we believe that Bill 10 is like using a sledge hammer to swat a fly.

We also note the comments of the Fair Rental Policy Organization of Ontario with regard to the nature of the primary characteristics of the market created by roomers and lodgers, as opposed to the market created by the normal rental market.

If legislation is to be fair and equitable, it must take into account the variations and stratification of housing and, therefore, the variations in needs.

We concur that there needs to be careful consideration of the definitions included in the act, to ensure that only those sectors that need to be addressed are in fact addressed. Without such consideration, we agree that such various individuals as retirement home residents or casual hotel room occupants will be included. Ontario does not need the bureaucratic nightmare that would ensue should that be the case.

We also concur with the Fair Rental Policy Organization that Ontario needs a much speedier system to resolve tenant-landlord problems. In fairness to both the roomer and the landlord, given the short-term nature of much of the accommodation, a speedy, short-term response to problems is also required.

The Ontario Real Estate Association is concerned about housing in

Ontario and is especially concerned that the entire housing mix--ownership, rental, co-op and rooming--be carried on in an affordable and fair manner so that all parties are treated fairly, equally and harmoniously as is their right.

As you study Bill 10, we believe that you will address those issues and seek fairness under the law for all parties in the rental agreement. We also believe that you will be cognizant of the fact that Toronto's housing problems do not necessarily extend out into the rest of the province and that if Toronto has a disease, other communities do not need the shots.

Lastly, we are pleased to see Bill 59, which addresses what we see as a flaw in Bill 10. Under Bill 59, there would be an amendment that exempts those home owners who have four or fewer roomers from the extension of the Landlord and Tenant Act. Bill 59 recognizes that not all rooming situations are the same, that urban problems do not necessarily apply in all parts of the province.

We support the thrust of Bill 59 which is, we believe, an attempt to make Bill 10 a fairer and more equitable piece of legislation.

In summary, the Ontario Real Estate Association accepts the concept that fair, adequate and affordable housing for all Ontario citizens is a goal for which this province must strive.

We believe that any legislation purporting to provide such fair housing must be fair to all parties in the housing transaction.

Careful definition of terms and the thrust of legislation will ensure that the proposed legislation does in fact do what it intends to do.

When examining a problem, whether in housing or not, legislators should carefully examine (a) the extent of the problem including geographic extent, and (b) whether the proposed legislation will have negative side effects upon those sectors not included in the original intent of the legislation.

Bill 59 should be adopted and thus amend Bill 10 to ensure that home owners renting out rooms in their own residences are exempt.

Any examination of the problems represented in rooming or boarding situations should provide for a speedy resolution of any disputes or intolerable situations.

Final resolution of the problems represented by this bill and by other rental residential situations will not be fully accomplished unless and until the supply of rental accommodation is increased in the private sector.

Mr. Chairman: Thank you very much for your presentation before the committee. We have questions from the members of the committee, starting with Ms. Cigarettes.

Ms. Gigantes: I would like to thank you for your presentation to us. I would like to take this opportunity to let you know that this is not a Toronto disease. It has afflicted Ottawa for a long time. We have lost thousands of rooming house spaces or units over the past several years. This has had every bit as much of an impact on the life of low-income single people in Ottawa, on a proportionate basis, as it has here in Toronto. The march of

time proceeds in much the same way as it does here in Toronto in the devastation of housing opportunities for low-income singles.

I will remind you that there are many more low-income single people around now than there were 10 years ago in Ottawa-Carleton. The number of employable people on welfare has been the growth component in the regional welfare case load over the last several years. We are dealing with a lot of people in Ottawa who desperately need some security of tenancy and some very basic protection.

Furthermore, as you may be aware, an earlier presenter today, on behalf of Regional Realty Ltd. of Ottawa, explained that one third of the rooming house units available are in one gigantic tower, controlled by one company.

It has been my experience from knocking on doors in the area I represent that in fact there are a large number of rather large rooming houses in which the security of tenancy and the rights of the roomers have been under onslaught by landlords for a long time. I feel a desperate need in the community I represent to have this kind of protection for people, so they are treated like other people when they are seeking a rooming house.

Mr. Chairman: Could we have a question? We have had a statement.

Ms. Gigantes: I do not know how to put this question. How come the Real Estate Association of Ontario does not know there is a problem in the cities outside Toronto?

Mr. Cathcart: While we say the problem is located predominantly in Toronto, it cannot be denied, as you say, that it exists in certain areas outside Toronto. That is why the amendment we propose, which is included in Bill 59, would exclude those home owners who are taking people into their homes. Surely, that is the thrust of--

Ms. Gigantes: No. I would like to ask you, why is it necessary for somebody to have an exemption under the Human Rights Code to discriminate on the grounds of sex, colour, race, creed, and marital status? Under the Human Rights Code, you can do all those things in renting out lodging, a room or an apartment to somebody, if you live in the accommodation. You have all those screening mechanisms available to you, plus the ordinary screening mechanisms used by all landlords, such as credit rating and previous record of tenancy. All landlords use that all the time. You know that. Why is it that when you have all those mechanisms available to you when you live in the accommodation you are going to share with somebody by way of renting a room, you also need (inaudible) 20 days to give them notice to get out? I cannot buy that.

1730

Mr. Cathcart: I will get back to Bill 59. I hope the committee would consider a recommendation to resolve the problem that I see in the small roomer accommodation situation, where there are four or less tenants, roomers, boarders or whatever.

Ms. Gigantes: I have indirect personal experience with this. My girl friend bought a house. She had trouble with the mortgage payments initially. She rented out her basement. The first person who rented out her basement she got along with very well. The second person who rented out her basement did not allow her quiet enjoyment of shared facilities, and in fact was intruding

on her quiet enjoyment of her own facilities. Twenty days' notice was plenty under those circumstances. That is grounds for eviction.

Mr. Doyle: I do not disagree with that. That is certainly not the major thrust of our presentation. We simply concur that where there are intolerable situations--we just heard a long discussion as to a definition of "risk" and "intolerable" and so on, whatever the courts decide. The point is that if 20 days is sufficient, fine. That is not the thrust of this particular brief, nor, if I might correct an impression you might have gained, are we opposed to Bill 10. That is not what we were saying.

Philosophically, we go back and say, yes, we would rather have had it another way, without rent controls, landlord and tenant all that debate that went on through the province. We certainly presented briefs to various committees of the Legislature. The bill is in place, rent controls are in place and that is there. Given that, the extension of Bill 10 to cover roomers and boarders meets a problem we have identified. We said primarily Toronto, but we did not limit it to Toronto. Certainly there is Ottawa and we can probably find situations like this in Hamilton or London.

Mr. Jackson: Windsor.

Mr. Doyle: Or Windsor. We are not suggesting that this is solely and exclusively a Toronto problem. Perhaps a better selection of words might have been "urban problems." We are simply saying there are situations that must be addressed.

Ms. Gigantes: Are you aware that in eastern Ontario there is a disproportionate number of low-income, single people in the area outside urban and suburban Ottawa-Carleton? About 30 per cent of the single people who live in the counties surrounding Ottawa-Carleton are qualified as low-income, single people. If they do not live with their parents, and one does get too old to live with one's parents, they too have to seek rooming house accommodation. I cannot see why they should not be treated like other people who can afford more in terms of housing when they contract with somebody for accommodation. Why should they not have the same rights and protections in terms of their stability of housing?

Mr. Doyle: You are saying you want Bill 10 extended to those people?

Ms. Gigantes: I would like Bill 10 extended to all rooming situations, to all rental situations including roomers. I still fail to understand why it is that when our Human Rights Code permits vast grounds of discrimination about who you share your own accommodation with, if I rent out four rooms in a fairly large accommodation--obviously I have a fairly large accommodation if I am renting out four rooms--I should also be able to kick somebody out overnight.

Mr. Doyle: I do not think we are suggesting they should be kicked out.

Ms. Gigantes: Now they can be.

Mr. Chairman: Please allow the gentleman to respond to the question. You have asked the question.

Ms. Gigantes: That is what the exemption he is asking for and what is being proposed to us would mean.

Mr. Chairman: I have heard the question very clearly. I think our invited guest has heard the question. I am only saying give him an opportunity to respond.

Mr. Doyle: We are simply saying we agree, given the situation, that Bill 10 should be extended to roomers and boarders. The exemption we are suggesting is for four units or less. It is not a question in our minds, at least from our perspective as to the Human Rights Code or anything, of removing a person you do not want living there. That is not the thrust of it.

What we are saying is that there are a lot of people out there--senior citizens, for example--who are seeking to supplement their fixed incomes and who are also seeking to hang on to a large family home, for whatever reason. That is their right, if they want to keep their family home. One of the ways they can do it is to rent out some rooms.

We are simply saying that, faced with Bill 10, those people will look at it and say, "We are now covered under the Landlord and Tenant Act." That is an onerous, complicated, complex piece of legislation and we are very concerned that those people will say, in effect: "We do not think we have the financial wherewithal to handle it legally and whatever. We are not going to do it. Rather than provide those needed accommodations, we are going to pull out. We are not going to provide that kind of rooming." I think that is a major concern and it does exist out there. A lot of people will pull out of that market if they are covered.

Ms. Gigantes: I do not believe that.

Mr. Chairman: Could we move on to Mr. Jackson?

Ms. Gigantes: Could I just make one other tiny point? I do not know about the experience here in Toronto, and maybe Ottawa is unique in this, but the Landlord and Tenant Act protects 40 per cent of the rental accommodation in Ottawa, which is not in large buildings. It is in buildings of under five units, a lot of them doubles, a lot of them single-family homes. The Landlord and Tenant Act is very flexible and works very nicely in terms of protecting both sides in that arrangement. If we did not have the Landlord and Tenant Act for small building rentals in Ottawa, that would leave out 40 per cent of our rentals.

Mr. Jackson: Notwithstanding Ms. Gigantes's inability to understand the difference between a self-contained unit, which is clearly set out in the act, and a unit provided in a roomer-boarder situation, where facilities or common areas are shared with an owner and a tenant, they are rather unique and separate situations. I think the brief that has been presented recognizes not only that point but also the point that the real problem and the aspirations for Ontario's tenants is that they can be provided with more affordable self-contained units so that, hopefully, we can live in the kind of province where we do not have to rely totally on transient roomer-boarder type accommodation.

Ms. Gigantes: To Mr. Jackson, the lack of--

Mr. Jackson: You made your comments; let me make my comments.

Mr. Chairman: May I have some order, please?

Mr. Jackson: Conduct yourself with a little bit of courtesy.

Ms. Gigantes: He has attempted to say that I admitted a lack of understanding in an area, which I did not. I said I did not understand why the exemption was being asked for. What he has just said is an inaccurate reflection of what I was saying.

Mr. Jackson: If you would listen, maybe you would understand what the exemption is all about.

Mr. Chairman: We all understand that. The committee will have full and ample time to get into cross-debate. Mr. Jackson has the floor.

Mr. Jackson: I would further point out that the deputants have contained within their report a suggestion that what we do not need is more legislation in this regard. The whole concept of those tenants who live on the outskirts of Ottawa and their income problems could have been further assisted by an incomes policy or a subsidy program. Ms. Gigantes's political party relished in the thought of defeating the amendments that were presented during Bill 51 to actually cover that very point. Had she read the brief or listened to the brief carefully, she might have gleaned that very clear and concise solution.

Mr. Chairman: Mr. Jackson, you are being somewhat provocative and I think you should direct your question--

Mr. Jackson: Now that I have had equal time with respect to announcements, I would like to proceed with a question to the deputants.

Do you believe it was appropriate for Bairstow, in his findings, to recommend the exemption for Bill 59?

Mr. Doyle: Having looked at the task force report, I think what they were trying to do was a fair and equitable arrangement. They identified the problem and differentiated. I think that is what we were talking about, the variety of housing and the stratification of needs.

1740

Mr. Jackson: Would you further agree with the recommendation of the minister's own Advisory Committee on Landlords, Tenants and Lodgers, which is comprised of tenants and landlords, that an amendment somewhat similar to Bill 59 as an exemption is appropriate? Do you feel that is appropriate?

Mr. Doyle: Yes, certainly.

Mr. Jackson: Finally, do you feel that those provinces in Canada that have proceeded with legislation similar to Bill 10--in each and every instance where they have proceeded with their version of Bill 10, they have included a form of an exemption similar to Bill 59--do you equally feel it was appropriate in those provinces that this consideration was given?

Mr. Doyle: If they agree with the minister's advisory committee and if they agree with Bairstow, they must be right.

Mr. Chairman: I want to ask a question with respect to the concern

you have that the problem is essentially a large urban problem centred in areas of perhaps 100,000 to 200,000 or more people. If this committee were to entertain the idea of a more focused response to the problem in the Torontos and Hamiltons and Ottawas of the world, what kind of mechanism would you suggest would be appropriate in terms of excluding those areas that by all appearances do not have the same kind of difficulty with respect to roomers and boarders that Toronto might have? As an example, would a local option or a municipal response to this in some fashion be the kind of thing you had in mind, or have you thought it through in terms of how you would actually introduce an exemption mechanism?

Mr. Doyle: I think an exemption mechanism through the local municipality, on the surface at least, would probably be a quick study, a good way to do it. This is something we as an association would certainly look at. We would be happy to co-operate with the committee or any body. We will certainly provide our viewpoints on such an approach should we be required to do so.

Mr. Chairman: This might be a difficult question. Recognizing that in some areas as a result of certain legislative moves that have been approved by governments in Ontario, certain rental properties--I would think you would have at least some experience with this--are being abandoned by landlords as a result of difficulties in recovering an adequate amount of money to realize the kinds of difficulties they have in paying their mortgages and their expenses and so forth, is that situation continuing in your judgement? I want to get to boarders and lodgers in a moment. Is that situation, from an Ontario perspective, still happening?

Mr. Cathcart: Looking at it another way, there are many small municipalities in Ontario that are witnessing a lot of illegal rooming and rental accommodation in their municipalities. They are closing their eyes to it for the main purpose of keeping that supply available, because if they were to enforce their own bylaws right now, they would eliminate a very large supply of accommodation that would not be there otherwise. I would say smaller municipalities under a certain population certainly should have the right to opt out of such legislation. You mentioned 200,000; maybe even less than that.

Mr. Chairman: Let me get to a specific case. I want to know whether this might apply to any proposed legislation we are looking at here. I know of a situation in my own municipality. It happens to be one in which the owner lives in my municipality but the property he owns is in another location. He purchased a property, and as a result of the purchase of that property, the cost of the property went up. Some would refer to this as a flip, but this is a very small individual, not a corporation in this particular instance, who invested in something he felt was going to end up ultimately in a profitable situation.

The rents were increased through negotiation with the tenants but an appeal was launched by one of the tenants that resulted in a rollback. The cost of the property--in other words, the mortgage and all the other encumbrances--were established at one level but once the rents were rolled back, they were of course at a much lower level. This individual found himself very quickly in bankruptcy because he could not get a hearing before the appeal board to get a determination as to the justification for the rent increases.

That situation is bad for the tenants as well as for the landlord. It concerns me that if we move towards additional legislation, we should make

sure it is sensitive to those kinds of needs because you cannot force someone to operate properties or premises at a loss. It is not a social service; it is a business to an extent. At the same time, we appreciate in this committee that there has to be a balance, if you will, between the rights of tenants and the rights of landlords. In this particular instance, the landlord effectively went bankrupt. That was partially because of the delay in the hearing process to get an answer to whether the rent can or should be allowed to increase.

I am just wondering whether you have had any experiences with that kind of thing in either small or large urban centres.

Mr. Doyle: In our brief with respect to Bill 51, and also some presentations to the Thom commission, we identified that rollback provision as one of the concerns. Somebody in all honesty and fairness sold a property to another individual who in all honesty and fairness bought it, and with the delays and the procedures he had to go through, suddenly found the rollback occurring.

This brief was also brought up at a time when interest rates were all over the map. It was a concern we raised then and we are seeing them around the province. Our real estate boards, 48 boards, I think could probably provide us with information as to how many they are actually seeing, but it is happening. Whether it is happening a lot or a little, I do not think I could give you an answer off the top of our heads.

Mr. Chairman: Is the number for exemption purposes proposed in Bill 59 the number you are endorsing or do you have another number in mind in terms of size?

Mr. Cathcart: You mentioned four or less, Mr. Chairman.

Mr. Chairman: Yes, that is what Bill 59 proposes, but is six, three, or some other number more acceptable to you are you accepting what Bill 59 proposes in terms of an amendment?

Mr. Cathcart: I think that is what the Bairstow report suggested as well. We felt it was reasonable.

Mr. Chairman: Okay, so that is your number as well.

Mr. D. R. Cooke: How would you feel about five?

Mr. Jackson: A difference of one.

Mr. Cathcart: I do not think that would make any significant difference. You have to try and equate it to resolving the problem of the little individual who is using his own home to provide a necessary service. The chances of having more than four are pretty remote unless the home is a very big one.

Mr. Doyle: I think, too, if you are getting into five and up you are probably looking at somebody who is in it more as a business proposition--

Mr. Chairman: More commercial.

Mr. Doyle: --than the individual we are talking about, the one who is trying to provide a rooming service for a few people.

Mr. Chairman: With my brief discussion, and I know the time is getting late, I was trying to lead into the question of whether boarding houses generally are a hot property on the market at the moment in Toronto or elsewhere. Is it something in which there is a great deal of interest, trading in those kinds of properties, or is it a relatively stagnant market? If you were to give a quick snapshot of the market as it is now, how is it viewed from the real estate investment standpoint?

Mr. Cathcart: I do not know about Toronto; it is a hotbed no matter what area you are in. Outside, I find it certainly is not a hot property to sell anything that is by way of a commercial apartment unit, that sort of thing.

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Mr. Poirier: Mr. Chairman, I presume you were asking the question in regard to being sold and remaining as a rooming house?

Mr. Chairman: Yes, I am thinking of it as a growing business, whether the number is three, four, five or whatever it happens to be.

What I was getting at is that there are situations where apartments are no longer a hot property. Years ago, there were small investors who got into the apartment business--I have talked to these people; this is not just hearsay on my part--with the specific intent of having two, three or four units as a form of pension plan for their later years. That was very common in this province. Many of those people are no longer investing in those kinds of properties. They are not really and truly commercial. They were into a very small business, and quite frankly, the ramifications of landlord and tenant legislation boggles their minds. They have abandoned that and they are getting out of that market.

Mr. Cathcart: Exactly. You have hit it.

Mr. Chairman: I am moving to rooming, boarding and lodging houses now to see whether that is a property for which there is a great deal of demand at the moment; in other words, a house that has accommodation available for three or four people and could be sold as a quasi-commercial enterprise. Is there any kind of demand out there for that sort of thing? What is the market? Is it a relatively nonsaleable item?

Mr. Cathcart: You mentioned at the beginning of your question that it used to be a very appealing proposition for the small entrepreneur, and small they were. In fact, one of the most numerous of the sales way back, say, 10, 15 or 20 years ago was the fourplex, where the owner might buy it, live in one and rent the other three. That was not only a source of income but also, as you say, a source of retirement income. That is no longer of great appeal out there. It is not something that there is a great run on at the moment.

Mr. Doyle: Expanding beyond the fourplex, triplex or even duplex, anything that goes into rooming houses per se, anything that has anything to do with rental accommodation, you find there is a much slower market in that. There is not a demand from people who want to buy properties like that.

Mr. Chairman: I raised the question for this reason: While we are talking about legislating certain controls on the other side, I think we have to have a little concern as a committee about the supply end of it. I would be

very reluctant to do anything that would dry up the supply and there have been many deputations before us that have commented on this.

On a personal basis, I would find some reluctance to do anything legislatively that would dry up those two-unit, three-unit and four-unit operations, which are very casual, relatively noncommercial and where there is a relationship that is far more informal, if you will, between the occupant and the individuals who are in that particular setting. It is a concern I think some of us have relative to this form of legislation.

Mr. Doyle: That is what we were saying. In any legislation affecting housing, there has to be fairness and balance to all parties. That certainly is a concern that would cause people to think twice, three times, even four times before moving into a situation where they were going to be involved in some way, shape or form with the Landlord and Tenant Act or any kind of rental situation.

Our concern is that in a situation like that, if that person does not have this exemption under Bill 59, the alternative might be that he will say: "Fine, we are not going to rent that room. We will just sell it as a house and move into some other kind of accommodation for ourselves." What you have lost is some much needed, affordable housing.

Mr. Cathcart: We have heard that individuals who give up their privacy and much of the enjoyment of their own homes to share them with roomers, boarders, lodgers or whoever are creating a great service. It is also an inconvenience and they are depriving themselves of much of the privacy a normal home owner has. It will not take much to eliminate those people from the marketplace and I think Bill 10 in its present form will do just that.

Mr. Chairman: Thank you for your responses. We appreciate your time before the committee.

Mr. Cathcart: I thank you for giving us the opportunity.

The committee adjourned at 5:54 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PARALEGAL AGENTS ACT

MONDAY, JUNE 22, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Committee of the Symposium on Paralegals:

Day, M., Chairman

McKeracher, P.

Bassin, S.

Ewert, C.

From the Institute of Law Clerks of Ontario:

Harrison, A., Vice-President

Polman, W. M., President

Bristow, J., First President

Boakes, D., Historian, Past President

From the Ontario Federation of Labour:

Griffin, J., Executive Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 22, 1987

The committee met at 3:37 p.m. in room 228.

PARALEGAL AGENTS ACT
(continued)

Resuming the adjourned consideration of Bill 42, An Act to regulate the Activities of Paralegal Agents.

Mr. Chairman: Members of the committee, I apologize for being a couple of minutes late. I had a couple of interviews just outside the door that detained me for a few minutes.

I would like to get started by inviting the group from Durham College of Applied Arts and Technology to come forward.

Mr. O'Connor: On a point of order, Mr. Chairman.

Mr. Chairman: Yes, before I have the Durham College representatives come forward, I will turn to Mr. O'Connor for comment.

Mr. O'Connor: I note from today's agenda that we have three delegations to appear before us. The last time I was here when dealing with Bill 42, I understood we had two to hear from and that there was, therefore, sufficient time to continue with the clause-by-clause analysis, there being only two clauses left, I believe.

Now that there are three, and so very little time for the clause-by-clause, which may not be completed today--or at least there is that possibility--I am wondering if we can agree among ourselves that we will continue on with clause-by-clause, not tomorrow, which has been set aside for Bill 10, but next week if we are here. If we are not here next week, then the first time the committee sits in the fall, I believe it would be September. That would be appropriate, to try to finish up those last two clauses. Would there be agreement of the committee to do that?

Mr. Chairman: Does that meet with your approval? I am not sure. Is that what we agreed to last time?

Mr. Charlton: The committee voted on that last week. You were in the chair. You requested permission to seek time, if we did not finish now, to sit in September on the issues.

Mr. Chairman: Apparently, we have covered it already.

Mr. O'Connor: Yes. I believe, though, that the agreement was that if we did not finish now, we would do it in September. There is now the very distinct possibility of us being here next week, in that the government has indicated an agenda which would choke a horse getting through. I do not see it as possible to accommodate the government with its present agenda. It does appear we will be here next week and I suggest we use that time next week.

Mr. Chairman: There appears to be no objection, then, to proceeding along with the agenda today, Bill 10 tomorrow and then Bill 42, either next week or in the fall, if it is necessary. We will proceed in that fashion. Mr. Ward?

Mr. Ward: I was just commending you on your decision.

Ms. Gigantes: Let's get going.

Mr. Chairman: All right. Again, I will ask for the Durham College representatives to come forward. If they would take seats at the front, I would appreciate that. Let me welcome you on behalf of the members of the committee.

I will ask if you would introduce yourselves to the members of the committee once you are comfortably seated. This is for purposes of identification for Hansard when you respond to any comments or if you make any comments with respect to your presentation. Again, welcome, and we are pleased to have you here with us in regard to Bill 42.

COMMITTEE OF THE SYMPOSIUM ON PARALEGALS

Mrs. Day: My name is Midge Day. I am chairman of the Committee of the Symposium on Paralegals and a teaching master at Durham College.

Mr. McKeracher: My name is Peter McKeracher. I am also a teaching master at Durham College. I thank you for having us here.

Mr. Bassin: My name is Sherwood Bassin, known as Sherry, and I am also a teaching master at Durham College.

Mr. Ewert: I am Charles Ewert. Thank you as well for having us here. I am a teaching master at Durham in addition to the others.

Mr. Chairman: All right. Whenever you are ready, you can proceed with your comments. We have allocated 45 minutes in total for your presentation as well as any questions that might be raised by the committee, so I would ask that you leave some time at the end of your presentation so that we can raise questions in regards to comments you have made. You can proceed whenever you are ready.

Mrs. Day: Both personally and on behalf of my committee, I wish to thank you for the opportunity to present to you the concerns expressed by the registrants at the symposium held at Durham College on June 3, the theme of which was 'Paralegals: A Time for Definition.' In addition to the copy of our formal presentation, you have a copy of the letter, dated June 5, 1987, addressed to Ian Scott, Attorney General of Ontario.

This letter enclosed the unanimous resolution of the registrants, along with a list of those present at the symposium. A videotape of the concerns expressed by the panellists and the registrants who attended the symposium was also forwarded with this letter. The presenters before you are all teaching masters in the legal administration program at Durham College, which was initiated in 1973.

You must appreciate that our formal presentation reflects to some degree the time constraints permitted for its preparation by your invitation, which was telephoned to me on June 11. The time constraints precluded any personal,

in-depth research by the chairman or the committee on all aspects of Bill 42 and its possible implications.

The points included in our submission reflect the fears and concerns voiced by participants at the symposium and our concerns from an educational perspective. Our primary information source was the spontaneous happening at the symposium that resulted in the delivery of the resolution, videotape and letter to Mr. Scott.

The following are the areas of concern that will be dealt with in detail in our oral submissions: (1) the suggested need of the public for access to less expensive or cheaper legal services; (2) the mechanism we believe is necessary to accomplish this goal of less expensive legal services equitably for all concerned; (3) the creation of competition in an already occupied professional field and how this might best be achieved with maximum benefit and minimum disruption to the lawyers, law clerks and paralegals in the field; and (4) the recommendation of how this established consumer need for access to less expensive legal services should be met, to provide assurance and protection to the consumer of the quality of the legal services which will be offered to the consumers by this new profession.

It is our submission that the responsibility for providing this assurance and protection to the public of quality legal services rests with your committee and the Legislature of Ontario, not with the committee proposed under the published or current version of Bill 42.

The following is a summary of our conclusions and recommendations as set out on pages 12 to 14 inclusive of our formal presentation. Our conclusions are:

1. The impact, both on the public and all interest groups in the legal field, is believed to be much greater than the time allowed by the standing committee to review and consider its implications would indicate has been accredited to the bill.

2. The guiding principle of the bill, which appears to be the delivery of less expensive legal services, is welcome. The methodology employed to implement this principle in the current bill has created concerns and fears and may mask issues which, if examined more thoroughly than appears to have been done, would cause this committee to re-examine its position as to the acceptability of the bill.

3. The bill acknowledges that educational qualifications and certification are necessary for paralegals, and we endorse this acknowledgement. We submit that the methodology adopted in the bill of placing the responsibility for sorting these issues into a regulatory process, by what is seen as an apparently biased committee, requires further consideration and revision.

My recommendations in order of priority are as follows:

1. The examination of the delivery of legal services using paralegal agents and their acknowledgement is a proper and present concern.

2. We ask that you do not recommend passage of Bill 42 in its present form.

3. The registrants at the symposium concluded that additional study of

Bill 42 was necessary and that the parameters of practice, qualification and certification of paralegals should be done before and within the legislative process before constituting and empowering a paralegal agents' committee.

4. If you decide that the need for immediate legislation is so great that you must recommend Bill 42 for passage then, at the very least, you must re-examine the constitution of the committee proposed under the bill. We submit that other interested and concerned parties, such as the community colleges and the education committee of the Institute of Law Clerks of Ontario, to name only two, should be added to the committee. Restructuring the committee in this way would, we believe, add a moderating, mediating and balancing element which would assist in the harmonious delivery of quality, inexpensive legal services to the public of Ontario.

Our next presenter is Peter McKeracher who will be followed by Sherwood Bassin and Charles Ewert. I will then have a few comments to conclude our formal presentation.

Mr. McKeracher: At this point, I would like to outline briefly to committee members some of the concerns and problems that surfaced and that we became aware of as part of this symposium of discussion on paralegals in Ontario that we held at Durham College a number of weeks ago.

The first point that emerged was that we would commend the Legislature for moving quickly to deal with Mr. Justice Evans's POINTS decision that paralegals are paid agents who appear before certain tribunals. He also said there is a legislative need to review the status of agents and other paralegals, which is now a matter of considerable public discussion. I would commend the Legislature for moving quickly on this.

We would also ask them to take some time to reconsider the potential effects of this bill on the legal system as a whole in Ontario. We would ask them to carefully re-evaluate the provisions of Bill 42 in the light of several concerns and interests that became apparent at our symposium for paralegals.

The first concern was the question of the public: What is the public's need and concern in this area? It became apparent to us that it was twofold: first, in the area of affordability and access to affordable legal services; second, going hand in hand with this, was a determination that there must be a consumer protection element of quality of services in this area.

Basically, it is our submission that Bill 42 is not an adequate answer to both these concerns as it now stands. In the question of consumer protection, we want to point out very strongly to the committee that in this area a member of the public approaching a legal problem is at a great loss when determining, "What is the best service I can get for my dollar?"

The consumer is in an area where common sense and general business knowledge is not going to get him very far. Our legal system has become very complex and what he must rely on is a system of accreditation based on strong educational requirements. This would be of fundamental concern to the public. We submit that this is not something which should be put off to be decided at a later date, but by the committee as an instruction under Bill 42 right now.

-area of concern. In the POINTTS case, Mr. Justice Blair makes it clear in his decision that paid agents are able to practise in various tribunals in Ontario.

What I think must go hand in hand with this is that if the Legislature is to support it, there must be consideration of the fact that public confidence in people offering paralegal services should be paramount. The public must be confident if this area of legal services is to develop and prosper. Again, we submit that Bill 42 in its present form does not adequately address this need to ensure public confidence in the paralegals.

With respect to the concerns of the legal profession, I believe you have had a submission from the Law Society of Upper Canada. They are concerned with the quality of legal services which, they generally feel, would be required in most cases to be provided by a member of the Law Society of Upper Canada. What they are also concerned about and what became apparent in the symposium is the question of demarcation disputes, where the lawyers practise, where the paralegals practise.

A concern that might arise could be a situation where one client in a matter is represented by a paralegal and the other client is represented by a lawyer. If there is not a meshing and a real confidence between these two branches, which are going to be the two branches of the legal services industry in Ontario, then the clients will not be served well. In effect, the lawyer may not be willing to deal with the paralegal and the paralegal might have difficulty in dealing with the lawyer. There has got to be a meshing and a confidence between both of these groups in order for this area of legal services to work effectively.

From the point of view of ourselves as legal educators, we have been involved in the training of people working in the paralegal field, not as defined in Bill 42, but in the generic sense: people providing legal services who are nonlawyers. Most of our students have been working under the supervision of lawyers and, thus, would not be touched by this bill. But now we are having some of our students move into a field which would be regulated and dealt with by Bill 42. From this point of view, we believe we have some insights and can provide some input to this committee and to anybody drafting and providing for a legislative scheme to regulate this area of legal services.

In conclusion, what we want to point out is that this committee is dealing with the creation of what will, in effect, be a new profession in Ontario. We want to submit that the creation of this new profession, particularly when it is entering into an occupied field where there is potential for conflicts and problems, should be done very carefully with a view to an understanding and a complete study of the offering of legal services in Ontario.

That is my portion of this submission, and I call on Sherwood Bassin to continue.

Mr. Bassin: I would like you to bear with us a little bit in case of repetition, but that clearly points out some areas of concern. That is the reason we are here, and I appreciate your patience and your concern.

The issue of Bill 42 really seems to be a provision of less expensive legal services in Ontario. This is what we are suggesting here, basically, who may charge fees directly to the public for legal services. This is what we are at issue with here.

I am suggesting, and it is implied perhaps through this act, that you

can gain a sufficient knowledge of the law either through vocation or education, other than that of lawyers, to provide the public with legal representation on matters in certain forums and in certain uncomplicated areas. Let us talk about this assumption.

One of the things that bothers me and the group that is here, and the reason we as educators have taken the time, is that when you take a look at Bill 42--and our concern here is to address the question of paralegal agents--there is a problem with their definition, their qualifications and their rights. That is what we are really here about and what we are really concerned about. The symposium that we represent on the day of that resolution was very, very concerned about that.

What do we want to address here? The simple matter that we talk about of minor forums. We want to discuss the purpose of the act and whether it is going to meet not only a public need that may be suggested by the passing of this act but also the public protection that goes along with it.

Because of the powers given to the committee as described by section 3 of the bill, we suggest that there is no clear, present, comprehensive definition of what a paralegal agent is, and it can certainly not be determined from that section. So we have a major concern here, coupled with the fact that five members, which is a majority of the committee under Bill 42, will define paralegals and their educational and certification requirements. We think that is too great a latitude to be delegated. We think that not only does there have to be justice, as has been said, but also there has to be an appearance of justice.

Let me talk about this. We want to talk about defining qualifications. We want to talk about defining educational requirements. We want to determine the specific extent of their intrusion into an already occupied field. For instance, I do not think there is any argument that an ex-police officer perhaps may have sufficient knowledge and skill to represent clients on very straightforward matters under the Highway Traffic Act, but what about other areas where he may not be qualified? How are they determined?

What about certain areas appearing before a specific tribunal? What are we going to get into here? Are we into a problem of registering trades? For instance, an electrician does not act in an area of a plumber. Consequently, we are very concerned. We do not suggest that the ex-police officer is not qualified, but we want to ensure for a public need, for consumer protection, that he is properly qualified.

We use the example that there is a certain assurance and a certain sense of confidence that when we get on an airplane the pilot is quite qualified. There is something you feel pretty good about. You would hate to think he was there reading the manual, wondering how to get down the runway. Consequently, there is assurance. We feel very strongly about the fact that it is not something the public is aware of. It is not something they have specific knowledge of; they do not have knowledge of the matters involved.

What does Bill 42 do? It does not define a paralegal. It creates a definer, which is this committee, which by regulation, you suggest, may create the educational and certification requirements. This certainly concerns us. What is the cost to that member of the public? Whenever you implement anything, you talk in terms of costs versus benefits. We are concerned that this less expensive legal aid, so to speak, may turn out to be quite expensive. We think it is incumbent upon you people to specifically make

definition within the act itself, not delegate such a major responsibility as that to a committee.

There are alternatives, and I would like now to pass it on to a fellow colleague, because what we are really talking about is guaranteeing consumer protection, as well as consumer need.

Mr. Ewert: I can almost put away my notes. Everything we have say has pretty well been said, but I would like to re-emphasize a couple of points. About a week and a half ago, I chaired a panel discussion which was composed of a group of people and which was presented before a number of other people. There were not only members of the public but also law clerks, or those who traditionally call themselves law clerks, present. There were paralegals and there were lawyers.

What surfaced there were a number of concerns, and the biggest one I think was lack of definition. If I could reinforce what Sherry has said to an extent, Bill 42 seems to do is create a definer, not a definition of what a paralegal does. To some given extent, what it then turns around and purports to do is give a majority of the committee to paralegals. In other words, one of the concerns that arose out of the symposium is that none of the collected group of people could come up with what precisely a paralegal was.

The act that is going to establish what a paralegal is selects five paralegals, puts them on a committee and tells them to go forth, define and multiply, I suppose. In its present situation, a major concern was that this committee, since it is taking a first step--I think the Chinese proverb is that even the longest journey begins with a first step--implies other steps to follow.

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Since it is a first step into a field already existing, it must be taken with caution and, hopefully, with the degree of definition that makes what will follow more appropriate in terms of dissemination of legal services to the public. I guess our suggestion then is, do not just create a committee and tell it to go away and define itself. That created a given amount of fear among those present at our panel discussion in the sense of how large a definition it could come back with.

It should be done up front by suggestion so that all the people involved in this particular endeavour will understand in advance rather than having a committee go away and define in the absence of public input precisely what it thinks they should be. That definition, in terms of education, in terms of the requirements it thinks they should have, will ultimately give us our definition of what a paralegal is. But you get into a very circuitous argument when you say the people to define that should be a majority of paralegals themselves.

I suppose the point in terms of the last major area of our brief is alternatives. From that point of view, many of the community colleges have been involved in training paralegals in a broader generic sense for some time, not so much on the level of the philosophy of the law but in routine areas. Where service can be given because of an understanding of skills in an across-the-board area, there is an asset available that I think is not being taken advantage of, in terms of the amount of study, not a trial-and-error process, that has been put into each one of those curricula.

They have looked not at a law school definition but at a skill-oriented definition. What is the minimum amount this student should know in this particular area before he can stand up and say, "We are here and we are quite confident, member of the public, that we are prepared to give you a legal service." In this sense, as Peter has written in his section, it is not like buying a car. If there is to be trust in the system itself, those who are confident can take advantage of it. "I think I can defend you" may be a very good answer, but who gets to say so?

I suppose our major thrust then is that even at the committee stage, rather than creating by statute a committee that can go away and define itself--and not even vested interest, because I do not think it can be perceived that way--if one perceives it simply as disseminating cheaper services, it begs its own question. Will it do that, or are people simply being entrenched in a given field? Once entrenched, is there real desire to create services at a cheaper level or to become entrenched and be able to disseminate services?

At the symposium, we heard a number of horror stories about franchising. Great costs are involved, with no particular requirement in terms of education. It is a good new job that is opening up, because it is not under the area of definition, as yet, which would require certain set skills before providing information or services directly to the public.

In terms of how I would round up at this point, there are alternatives. There are other sources of knowledge that exist in this area of skills, less than for a lawyer, where education has taken place, given to people at a level which is perhaps a compromise but which ensures a degree of qualification and understanding at a minimal level for the provision of routinely done services.

That information is available. There are curricula that can be made available to this committee or another committee set up by it, which could assist in drafting legislation rather than simply creating legislation that says: "We have now created a committee. Go look at ethics. Go look at the qualifications you think you should have. Go and do that. Come back and tell us what you think you should be," and away we go.

That is a large first step. It gives a lot of power to a committee, which if it is to be defined as five paralegals, on its very surface carries a majority of the people defining themselves and coming up with their own definition. The danger then is one of bias as well; justice not only being done but seen to be done.

I think there are assets available to assist the committee. I think there are assets available in terms of rounding out and squaring to remove the fear beforehand that this is really some great dynamo coming on to the scene by predefinition. Assets are available that can be looked at to be assistive--neither from a lawyer's point of view, which is vested in favour of nonchange or would seem to be, nor from a paralegal's point of view, which is vested in getting entrenched in a field. Establishing himself, defining himself and so on--but information available that has over time evolved through actual courses of study where very real definitions might exist that would assist, that are not entrenched in terms of stopping any growth in the area: assets that, hopefully, this committee or some subsequent committee would not overlook.

Mrs. Day: Just to conclude, although we did not have time to do in-depth research, I did respond to an advertisement that appeared in the

Toronto Star and arranged an interview with the president of the paralegal firm. The advertisement read: "Paralegal firm requires partner for expansion. Earnings of \$80,000 a year. No experience necessary. Complete training, including sessions at Osgoode Hall law school."

I arranged the interview on the premise that I was a member of the public wanting to make a career change to enhance my earning abilities as a single parent with a daughter on the threshold of university. Since my chairman is sitting in the audience, I would like to advise him that I was not seriously considering changing my job. The rest of the facts, though, are true.

Dealing only with the issues mentioned in the advertisement, I would advise as follows:

1. Although not actually stated during the interview, it was implied that I could actually earn more than \$80,000 a year in my first year of operation as a franchisee. I was informed in the written presentation and in conversation that, to quote from the written presentation: "The rewards will be many. An excellent return on your investment will be quickly realized."

2. Eighty per cent of the work done by the paralegal firm was in the area categorized as small claims and civil courts, which include all collection, lawsuits, consolidation orders, proposals, bankruptcy, credit counselling and debit counselling. Two other categories, namely small business and family, which included marriage contracts, separation agreements, divorce, wills and change of name, presumably make up the balance of 20 per cent. I was unable to get specifics on what is done in these areas other than generalities, except that only "simple separation agreements are done." I asked about a family that included children and was informed, "I would send them to a lawyer."

3. "No experience necessary." The training involves what is described as three pre-opening sessions at which an operations manual is provided. The manual indicated to me was at least 12 to 14 inches thick; a lot of material for a totally inexperienced person to absorb in three sessions.

4. "Complete training, including sessions at Osgoode Hall law school" appears to include general meetings, which are described as seminars held in Toronto for franchisees to attend on a regular basis. These are day seminars, and one program advertised as held in December 1986 included the topics of small claims, name searches, incorporations and divorces, all between 9 a.m. and 4:15 p.m. and including a lunch break of one hour plus two breaks of 15 minutes each, one in the morning and one in the afternoon.

The written presentation states, "Within your initial 12 months, you will have the opportunity to attend three lecture sessions at Osgoode Hall law school." Under the heading of "Continual Education and Guidance," the paralegal firm indicates that from January to June 1987, nine general meetings were held and one is to be scheduled. I asked about franchisees outside of Toronto and I was informed people from offices all over the province would be able to leave their thriving businesses to attend. As anyone involved in the legal field is aware, it is difficult, even for lawyers, to schedule continuing education personally due to the time constraints and demands inherent in the practice of law.

The initial cost to a new franchisee is \$15,000, which is paid under an agreement signed by the paralegal firm as licensor and the franchisee as licensee. The licensee must pay to the licensor, in addition, a monthly

royalty payment of eight per cent of gross revenues plus two per cent of gross revenues as an advertising contribution. All amounts to be paid by the licensee that are not paid when due shall bear interest at the rate of two per cent per month, calculated and payable monthly. This could mean an annual rate of 24 per cent and the interest is compounding monthly.

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If the licensee did not earn sufficient revenue to support himself or herself and, in addition, got behind on the royalty and advertising contribution monthly payments, he or she could soon experience great financial difficulty. The paralegal firm has the right, upon written notice, to terminate the agreement if the default in these payments continues for longer than 10 days. The licensor, on the other hand, has a reasonable time to remedy any default, that is, if the licensor is in material default of any of its obligations.

The licensing agreement provides that on execution of the agreement an initial licence fee of \$15,000 shall be paid by the licensee. The agreement states that the licensee acknowledges the licence fee to be fully earned by the licensor and nonrefundable upon execution of the agreement.

This concludes my remarks. Should you or your committee have any questions, we will do our best to respond.

Mr. Chairman: Thank you very much for a very interesting presentation. I thank you for the amount of work you have done by way of background in preparing for your submissions to us.

I want to advise the members of the committee that I have a list of questioners who have already indicated an interest in raising questions. I am going to have to move the questions relatively quickly, so we cannot have one member dominate the questions. I will have to use some judgement in when to cut you off, if that is necessary. I know I will not have to cut Mr. Ward off, so I will start with him.

Mr. Ward: I would like to thank the deputants for a very well-prepared and concise brief.

The general thrust of your presentation is one that I certainly support, that being that before you establish by legislation some self-regulating profession, you first have to identify the scope of practice, qualifications, code of conduct and all that. The one example that comes quickly to my mind is the current health professions legislation review that has been under way for better than three years. During that process, the various professionals are consulted, as well as those they would impact upon, in order to determine levels of self-regulation.

Do you think that perhaps the most appropriate way for Ontario to proceed at this time, rather than some form of ad hoc legislation, would be a comprehensive review that could put forward well-considered legislation that consumers in this province could have confidence in?

Mrs. Day: I think that is basically what we are saying in several different ways.

Mr. O'Connor: Thank you, Mrs. Day and gentlemen, for a very excellent presentation.

Your concluding remarks, Mrs. Day, were particularly interesting to me. I suggest that the scenario you described of the franchising of these agencies, the somewhat unfair terms of the agreement you outlined and particularly the woeful lack of education or training they seem to want to provide, makes the case better than anything for some kind of activity by the province, and as soon as possible.

What we are faced with in Ontario right now as a result of the POINTTS decision is that a particularly small area of the paralegal field, that is, those who attend in the lower court system, have been accredited or given standing, shall we say, to carry on their practice. That is, they are out there legally doing what they are doing now; the courts have determined that and the Law Society of Upper Canada has said it is not going to pursue the appeal any further.

Given that circumstance, I suggest we should move rather quickly to ensure, for the protection of the public, that what these people are doing quite legally they are doing with some degree of education, background and understanding of the services they are trying to promote. The kind of scenario you raised really does help make that point.

I think we are not too far off in our approach to this. I guess it was Mr. McKeracher who said things like "accreditation based on strong educational requirements," with which I agree entirely and which I suggest the bill provides for. You suggest the exact requirements should be set out in the bill. I am wondering if in legislation we should go that far, in that I would suggest the normal route to follow, as is the case with the Law Society Act, for instance, is not to set out how many years you have attend law school or what courses you have to take or what standards you must achieve. It leaves it to a governing body to determine the nitty-gritty of those kinds of standards on an ongoing basis.

You say that there must be public confidence in the paralegal. Exactly. If there were some kind of legislation requiring paralegals to be of good moral standing, as the bill suggests, requiring them to maintain errors and omissions insurance and requiring them to have received some kind of accreditation from a community college, a two- or three-year course, I suggest a lot of these problems could be resolved.

It just seems that in this small corner of paralegals where they are legally acting and doing what they are doing, we should protect the public by ensuring that they are qualified and educated. In the whole larger area of which my friend spoke, dealing with wills and incorporations and simple--whatever the heck that means, and we have heard a lot about it--separation agreements and so forth, sure we need an overall study to determine the lines of demarcation. But there are no lines of demarcation to be determined in Bill 42--

Mr. Chairman: Is there a question in here?

Mr. O'Connor: I am getting to it, Mr. Chairman. I will shortcut the question and go on to the second one.

The one area in which we do differ, I think, is in the makeup of the committee. You have brought up an argument that has some substance, and that is that the committee is dominated by paralegals. Incidentally, you also suggest that there should be somebody from the community college system on the committee. It is anticipated there would be, in clause 2(2)(c). I notice the Minister of Colleges and Universities shall appoint somebody.

I do not agree with you that there is no definition of "paralegal agent." It is right there, clearly, in section 1. I guess my question is, given all that, how would you see the committee made up? More people from the community college system, not a majority of paralegal agents, more lawyers or what? We need some guidance on that one.

Mr. McKeracher: I think if you refer to our brief, on page 11 we set out some suggestions. The numbers are not that important, but the intent is to make the committee balanced, in a sense. If we want co-operation among all members of the legal community, we would need, in effect, less representation of the paralegals.

Mr. O'Connor: The proportions you are suggesting make sense and are something I could quite easily live with in terms of amending the bill, and we have that opportunity. I think you are right. If it were not dominated by self-interest, as may be the interpretation from the bill as it is drafted, then a lot of the other problems you have expressed are alleviated. Am I correct in that?

Mr. Bassin: To a degree. It is suggested that is an alternative. As a matter of fact, when we discussed this whole issue, the balancing aspect of the committee would be the true democracy in action if someone had a position. That is why we have suggested the legal educators to be kind of the balancing aspect of it, to introduce people who are aware and are involved specifically in the profession of education. Consequently, if someone had a particular issue that was in a specific majority, bring it before the committee and convince it in the proper manner that you in fact operate under. If you are going to go to this, that would create more specific definition to things that would be introduced by the committee.

Mr. Ewert: If I may address the question as well, I still think the answer would be a no. As a second-best position, I think we came from the symposium with an understanding that, indeed, if it is that imminent and that all-pervasive a question right now in terms of having to be dealt with, and you are going to go ahead, then we would suggest, "Please, at least create a minority kind of government on the committee so that it can balance it out with what is perhaps seen as a fairer threshold." The answer would still be no, though, in the sense that POINTTS has not opened up some great huge gap, I think, that you have to drive a truck into.

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The safety net is still there in terms of people who want to go out and arbitrarily practise law. Policing it and so on may be a problem, but the real question is whether the hurry-up is so absolutely essential at this point in time, especially given that the parameters appear to be so small for what a paralegal is going to be defined to be under the act that, if there are matters that are noncontentious or routine, they could be set out.

If there were particular tribunals or particular subject matters, then set them out in advance because what you are doing is creating a committee with the full authority to--and I understand it is split now, so that is one stage we are a little behind--

Mr. O'Connor: Could I just interrupt there and suggest that--

Mr. Chairman: Very briefly. We are just about out of time and I have Ms. Gigantes here.

Mr. O'Connor: We have already set out very clearly the parameters in section 8.

Mr. Ewert: Except that you must, I think, Mr. O'Connor, come back to the point that until you have said, "This is the education requirement," and until you have said, "This is the certification requirement," you still have to address the issue of who gets to say it.

Is it appropriate for a police officer who may well know the Highway Traffic Act to understand a cross-sectional need for awareness in other tribunals? What about the certification process? It is a single word, but do you certify a paralegal that it can appear at all? Do you certify--

Mr. O'Connor: No, we have discussed that and decided.

Mr. Ewert: Then you still must have the criteria in place.

Mr. O'Connor: You do not in the professions, though. That is my point. You do not in the legal profession or the medical profession. We qualify doctors and lawyers, period. They then specialize--

Mr. Ewert: I suspect it is only at the level of diffusion of fear on the basis of understanding from the various participants who appeared before. They do not know what a paralegal is, and looking at the act you really cannot see because there is a scope to the activity of a single committee and it seems to be a bit of a downer.

Ms. Gigantes: There are two areas in which I would like to ask questions. I must say I have a kind of reverse sense of the problem with this bill from the one you are presenting. My view of the bill says that anybody who is paid and represents a person in one of the enumerated areas or one that might be prescribed is a paralegal and nobody else is, and nobody else can get paid for such representation. That is what has bothered me, section 5.

Can I ask how you get qualified to teach in the field that you are in? Are you lawyers?

Mrs. Day: No, I am a law clerk.

Ms. Gigantes: You are a law clerk.

Mrs. Day: I did it by dint of education on my own plus actual experience in the field. That is basically the mandate of the community colleges, to provide training in job-related areas.

Ms. Gigantes: How does the community college set its standard for who teaches in the field you are in?

Mrs. Day: Sherry, would you like to respond to that?

Mr. Bassin: The community college system basically has looked at two things, educational background and experience, as opposed to the university system, which puts a little more emphasis on strict educational background. They, in fact, give credit on their pay scale for experience. It is specifically defined, there is a 16-step level and, according to where you fit in, the step level would have something to do with experience plus educational background. The more educational background, the higher you may go in the step process by one or two steps, in addition to your experience out in the particular field. They specifically emphasize both.

Ms. Gigantes: That is one of the other concerns that I have. I think there are people operating as paid agents now in certain particular fields where their experience probably counts for a heck of a lot more than academic requirements we might legislate. It is pretty hard to say in legislation, "Well, experience shall count this much." That is why, I think, if you are going to go to that kind of system, with a test somehow set up of qualifications build into the system, there has to be some flexibility of definition. I do not think you can write that into law.

Mr. Bassin: In answer to that, I am not so sure that the qualifications would not decide. In other words, those who do not have enough experience or the practical knowledge, whether or not it be experience, may not qualify. For instance, in our program we specifically have a placement program for our students two days a week to gain that particular experience you talk about.

You can define that and design it right into your qualifying exams or whatever method of qualification you have, so that there is some understanding of the practicality, as well as theoretical knowledge, that is necessary. Those who have the practical knowledge always then have to demonstrate in these qualifying exams that they have some theoretical knowledge as well.

Ms. Gigantes: You understand my point too, which is that when you try to write these kinds of tests, which will be flexible and different perhaps in one field from another, it is very hard to do that legislatively. It is going to have to be done by somebody's judgement outside a committee room or the Legislature.

Essentially, what the bill provides is that kind of mechanism that you feel is too loose and undefined, but I would suggest to you that is likely what we are going to come up with if we propose any kind of qualification requirement, because we cannot set the qualification rules. Even with the best advice in the world, I do not think we would feel competent to do that.

Mrs. Day: May I suggest that part of our submission dealt with that area, in that in order to accomplish that, since we realize this is not necessarily your area of expertise, this is where there is that unused asset, that is, the community colleges and the education committee of the Institute of Law Clerks of Ontario which has been offering continuing education in the field to law clerks for years.

Ms. Gigantes: My point is that we, as legislators, would feel happier determining a body to make those kinds of decisions rather than trying to write it into legislation specifically. When you have asked for a particularity of qualifications and so on from us, I do not think you can expect that from us.

Mr. Ewert: I do not think that is what we are suggesting. What we are saying is that so little has been done in creating the absolute parameters that may exist generally. The specifics in licensing in any given situations might well be handled by a body, but when you refer to some minor courts and administrative tribunals, especially when the present direction in our government seems to be that mediation, conciliation and so on are growing fields, and you are expanding the substantive matters before tribunals at the same time you are saying, "Here is a whole new group of people who can come on stream to represent in those tribunals," the individual licensing requirements may still be there.

They may still be specified, and it may well be that, through

experience, those people do know enough to sit any kind of monitoring test or whatever without the attendance at an educational institution. The actual requirements in a given situation are still there at some minimal level and circumscribed, or you end up in a situation of, "Sure, I will give you a two-week quickie course on how to do this and away you go."

Ms. Gigantes: If I could, I will move on to the other question I have.

Mr. Bassin: I would just like to mention one point here. To summarize what we are saying, I appreciate the problem you have as legislators in defining it, because then you have by exceptional--

Ms. Gigantes: That is right.

Mr. Bassin: I respect that. What we are saying is that there have to be some general, definite guidelines. Then, if you are going to delegate this responsibility, which is commonly done, you certainly have to accept the responsibility of delegating it to a group of people that you have really taken some time to study and to make sure you can have some confidence that what you are entrusted to do is going to be done with the kind of strong respect you feel you have for it. I think that, at the very least, has to be done.

Ms. Gigantes: If I could move to another area, at the end of the submission you have made to us, you talked about the problem you see with franchising. I am just curious whether you think somebody who took all the prescribed or suggested courses and paid out his or her money to become a franchisee in such an operation could make \$80,000 a year. Do you think there is a market out there to that extent?

Mrs. Day: I raised that question when I was in the interview process, and the gentleman I was talking to took out a deposit book and started adding up the amounts that had been deposited in the bank from January 1, 1985, to the end of January. He came up with a figure well over \$40,000.

Ms. Gigantes: But this is like pyramid sales, isn't it?

Mrs. Day: Yes.

Ms. Gigantes: Really, when you are talking about your concern in that area, you are talking about the need to protect investors who may be making foolish decisions.

Mrs. Day: The public who may respond to that ad.

Mr. Bassin: That is right.

Ms. Gigantes: Surely, if that is happening, our pyramid sales legislation and consumer protection legislation should at some time click in.

Mrs. Day: I guess my concern is that I agree with your--

Ms. Gigantes: We had this gentleman before us, or one of them, who put an ad in the paper.

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Mrs. Day: I imagine you are correct when you say it would click in

at some time. I suppose my area of concern is, what about the people who do not have any legal knowledge or legal background but cannot resist the lure of earning \$80,000 a year--

Ms. Gigantes: And who do not have a lawyer looking at their contract.

Mrs. Day: That is right--and who will respond to it and be persuaded by these people who are franchising that this is possible.

Ms. Gigantes: It seems to me it legally crosses the line in several areas, and I am sure if somebody gets ripped off in one of these operations we are going to hear about it pretty quickly. This ad has been--

Mr. Polsinelli: Those are two different things. They are talking about the franchisee, and we are talking about the public.

Mr. Bassin: That is exactly right. We are talking really in both.

Mrs. Day: Because that franchisee, a totally inexperienced person, in my opinion, would not, based on the training that was outlined to me, be capable of delivering quality legal services to the public.

Ms. Gigantes: That may well be true, but I think the public's level of satisfaction with various kinds of professional services is not one of total contentment.

Mr. Ewert: But if you look at it practically, I think the other problem is that once you create a paralegal, and there are going to be people stepping into that office, one of the things they are going to have to do is make it a legal viability.

Speaking to the comprehensiveness of Bill 42, the other problem is that it really does not deal with solicitors' type of work, the various kinds of things that have been brought up before. But once you create the forum from which there is going to be a dissemination of service, it has to pay for itself or that person is investing in a wrong area. Therefore, once you practically create it, you are almost begging for the rest of the services to be offered as well, because they will have to be. That is a practicality that I do not think you can really avoid.

Mr. O'Connor: By way of supplementary, that is a misunderstanding we heard continually here. We are not creating anything. They are already created out there legally serving the public and no one can stop them. All we are trying to do here is, if they are able to do this legally, let us make sure they are qualified, they have been to school and are certified. That is all we are trying to do.

Mr. Ewert: You carry it a step further when you legislate on the subject matter, though.

Mrs. Day: That is right.

Mr. Ewert: The POINTTS decision says there are statutes--

Mr. O'Connor: What do you do, nothing? Let them go hog-wild?

Mr. Ewert: No, but it may not be necessary to jump in with hob-nailed boots, before some predefinition, before you start giving apparent legitimacy to something that can cast as broad a net--

Mr. O'Connor: They are already legitimate.

Ms. Gigantes: That has been one of my problems with this bill. I would prefer not to legislate it.

Mr. Chairman: Members of the committee and delegation, with great reluctance, I must suggest to all of you that we have an expiration of the time available. I know we could go on at some length. Your submissions have obviously been very interesting to the members of the committee. The questions that followed, I think, are an indication of that.

But I am going to have to thank you now. Again, I appreciate the amount of work you quite obviously have done on your brief and the conclusions you have arrived at, and also your recommendations. We will take the time to review them in detail, and I thank you for taking the time to come before us. It has been very helpful to us.

We are struggling with the problem that was summed up, I think, very briefly, by Mr. O'Connor. We are dealing with a situation that is there now, and some response on the part of the Legislature is obviously needed. The question is when, how much and in what form? We are going to try to come to grips with that. Thank you very much. I appreciate your coming before us.

Mr. Chairman: The next delegation, with apologies to that delegation for our being late, is the Institute of Law Clerks of Ontario. I would like to invite them to come forward, please. I welcome you to the justice committee discussions on Bill 42. Once you have been seated, if you take the time to introduce yourselves for purposes of Hansard, you can begin your submissions.

INSTITUTE OF LAW CLERKS OF ONTARIO

Mrs. Harrison: I am Adeline Harrison. I am a law clerk employed with Goodman and Goodman, and I am vice-president of the Institute of Law Clerks of Ontario.

Mrs. Polman: I am Wanda Polman. I am a law clerk employed with the firm of Fraser and Beatty and I am the president of the institute.

Mr. Bristow: I am Jim Bristow. I was originally involved with the special committee of benchers set up by the Law Society of Upper Canada which led to the inauguration and incorporation of the Institute of Law Clerks. I was a past president and I am at present managing clerk of the litigation department of McCarthy and McCarthy.

Mr. Boakes: My name is David Boakes. I am the past president of the Institute of Law Clerks of Ontario, a fellow member of the Institute of Legal Executives of England, a co-founder of the Institute of Law Clerks and I retired five years ago from a law firm, after having 50 years in the legal profession.

Mr. Chairman: Thank you very much. If you are ready, you can begin your submissions to the committee.

Mrs. Polman: I would like to thank you, on behalf of the institute, for giving us the opportunity this afternoon to make this oral presentation, in addition to the written submission that was previously filed with the committee. I do not intend my comments to be very lengthy, but I would like to emphasize the areas of concern to the institute and to law clerks in Ontario generally.

Bill 42 gives no recognition to either the institute or to the law clerks of Ontario. The bill simply indicates that a paralegal is not a person working under the supervision of a lawyer. Does that mean secretary, filing clerk, messenger? These people all work under the supervision of a lawyer.

The profession of law clerk is not a new one. In Ontario the paraprofessional in the legal field has been that of law clerk since the Second World War. A law clerk has a thorough knowledge of the practical and procedural aspects of matters handled by a lawyer. We have worked diligently with the profession to establish credibility, through courses of study of law, practice and procedure, as well as by the performance of our duties.

But the direct responsibility to the client for the acts of a law clerk remains with the lawyer by whom the law clerk is employed. In this way, the public is protected. So it has been in the area of the medical profession and the engineering profession, among others. In the area of medicine you have nurses and you have paramedics, but the ultimate responsibility remains with the doctor. So it is with the engineering field. The engineer has the final say.

The institute and its members have worked very hard promoting the status of law clerks in Ontario. Since it was incorporated almost 20 years ago, the institute has become recognized as a representative body for law clerks in Ontario by the profession. In 1975 a resolution was passed by the Canadian Bar Association, recognizing the institute as the representative body of law clerks in Ontario. The institute continues to receive inquiries daily with respect to both the profession of law clerks and the educational programs available for law clerks.

It was the institute that was first to organize formal courses of training for law clerks. These courses were set up and taught by members of the Law Society of Upper Canada. These courses are still being taught today and are continually being updated to keep up with the changes in the law. During the last two years the Ministry of Skills Development and Niagara College both approached the institute and requested its assistance in producing a training profile which sets the minimum requirements for the training of law clerks through community colleges in Ontario.

Yet there is nothing in Bill 42 which would prevent any of the proposed paralegals from describing themselves as "law clerks," "legal assistants" or "legal executives." The media has been instrumental in creating confusion in the minds of the public and the profession by failing to make any distinction between what is a paralegal and what is a law clerk. Evidently the paralegal agents themselves endorse and sanction this confusion by referring to themselves also as law clerks.

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The general reference to supervised and unsupervised nonlawyers muddies the waters even further. How is the public ever going to understand what those terms refer to? There are many examples of the news media displaying a complete lack of understanding of the respective roles of the paralegal and the law clerk and thereby confusing the public.

The name "paralegal" itself may create confusion in the minds of the profession. Does the public know or have any idea that a paralegal does not have an affiliation with the Law Society of Upper Canada or its members? The name "paralegal" may be very misleading to an unwary person who is unfamiliar

with the legal profession and who is seeking assistance. Bill 42 appears to protect specific paralegals working in certain areas.

We have been told that the purpose of Bill 42 is to protect the public. If the purpose of Bill 42 is to protect the public, then why is it limited to only some paralegals performing some law jobs directly for the public and not all paralegals who perform a variety of law jobs directly for the public? Should not all the public be protected?

It is the submission of the institute that paralegals be prohibited to use the name "law clerk" or any such derivative. Through their diligent efforts and consistent high standards, law clerks in Ontario have earned their reputation and established credibility with the profession, and it is the position of the institute that any bill with respect to paralegals provide specific exclusion of the right of paralegals to describe themselves as law clerks, legal assistants or legal executives.

The institute supports the concerns of both the Law Society of Upper Canada and the Canadian Bar Association of Ontario. We agree with the recommendation of the CBA-O that a further study be undertaken by the formation of a task force which would give fair and equal opportunity to give consideration to the concerns of lawyers, law clerks, paralegals and others performing law jobs.

The committee has had many presentations and, of those, many have voiced concern at the present format of this bill. Rather than be repetitious with respect to these concerns, we would invite the committee members to pose any questions they may have with respect to what I would call bona fide law clerks.

Mr. Chairman: Thank you very much for an interesting presentation. Again, I would ask the co-operation of members of the committee in keeping their preamble and/or political statements--I am sorry, I did not mean political statements--

Mr. O'Connor: You are looking at me.

Mr. Chairman: No, no. I was not looking at anyone. I withdraw the word "political." I ask members to keep any of their statements as brief as possible, so that we can get on with as many questions as possible from all committee members. Mr. O'Connor, you are first, and then Ms. Gigantes.

Mr. O'Connor: Thank you, Mr. Chairman, and thank you, ladies and gentlemen, for your presentation and your work here this afternoon. As I say, it is nice to see again both of you who appeared in my office. We met in my office about a year ago on this subject, and I understood at that time--correct me if I am wrong--that your presentation to me was to the effect that law clerks should be included in Bill 42, that is, you wanted to be included in the general category of paralegals, perhaps a subcategory called "law clerks."

I explained to you at the time that, by definition, a paralegal was someone who was working for a fee not under the supervision of a lawyer and that, as you were under the supervision of a lawyer, there was no real need to protect the public from law clerks because they were now well supervised and the ultimate responsibility for their work lay with the lawyer. The purpose of Bill 42, as I explained at the time, was to protect the public, as you have noted in your presentation, from unqualified and unsupervised paralegals.

I am a little confused, and this is my question, by paragraph 2 on your

first page wherein you state, "The bill simply indicates that a paralegal is not a person working under the supervision of a lawyer." That is not quite correct. It is somebody who is working "for a fee" not under the supervision of a lawyer. You continue, "Does that mean secretary, filing clerk, messenger?" No, it does not, because presumably they are working under the supervision of a lawyer, as you point out. I am just wondering what the point is that you are getting at in that paragraph. Would you elaborate on that?

Mrs. Polman: Sorry. That paragraph may be misleading in the way you are looking at it. The point that I was making is that the bill does not give recognition to law clerks.

Mr. O'Connor: Yes. And you would like it to?

Mrs. Polman: No. A law clerk is not simply a person working under the supervision of a lawyer. There are many people who work under the supervision of a lawyer, not only law clerks.

Mr. O'Connor: Let us just go back. A law clerk not only works under the supervision of a lawyer--

Mrs. Polman: Is not the only person who works under the supervision of a lawyer.

Mr. O'Connor: Yes. So? Sorry, go ahead.

Mrs. Polman: So that your--

Mr. O'Connor: The bill does not include secretaries or clerks or messengers either.

Mrs. Polman: No.

Mr. O'Connor: Nor does it include doctors or garbagemen.

Mrs. Polman: What are you defining that it does not include?

Mr. O'Connor: We go about it the other way. The definition sets out who it does include, and it does include people who are providing legal services in the lower court system, as set out in section 8, who are doing it for a fee and who are doing it unsupervised, period. Does that answer your question?

There does not seem to be the need to include you, because you are supervised. The public is already protected from you--not that it needs to be, of course, but it needs to be in the case of paralegals and that is what we are trying to do.

Mr. Bristow: Mr. O'Connor, if I may speak very briefly to this, I think Mr. Bassin made a point when he was speaking to you with respect to definition and I think the position that our president is trying to make to you is that, whereas he said you need to define what a paralegal is, we need you to define who is not a paralegal, i.e., a law clerk.

There has to be a clear definition which excludes paralegals from using the term "law clerk" or "legal assistant," and some do just that. It creates a great deal of confusion with the profession and with members of the public. I have had people come to me and say, "I see you are trying to get some form of legislation," and nothing could be further from the truth.

Mr. O'Connor: Except that you asked to be included in Bill 42.

Mrs. Harrison: No, I do not think we wanted to be included in Bill 42 per se. We were looking, as an institute, for some type of accreditation for our members within the institute, because we definitely know we are working under the supervision of lawyers and, as such, we are not practising on our own. We do not get fees from the public.

Mr. O'Connor: Normally, when you draft legislation here and provide definitions of who it includes, you do not then go on to include a definition of who it does not include. By inference, it does not include everyone it does not say it includes. The list would be endless if we did that.

Mrs. Harrison: Part of the concern of the institute is some of the media coverage that has taken place, even since POINTTS has been prosecuted by the law society. It is a great concern because the word "paralegal" is just flopped around: "I am looking for a paralegal to do litigation" or "I am looking for a paralegal to do real estate."

Mr. O'Connor: I see your point.

Mrs. Harrison: Members of the general public out there are using the word "paralegal" very loosely. They are including law clerks or legal assistants or clerks or whoever in this and, on behalf of the institute, we are very concerned that we are not besmudged with the same media coverage. We are not paralegals, and that is a great concern for us. We do not want the public to perceive that we are paralegals who are out there working for a fee and that we are not accountable.

Mr. O'Connor: I do not know that we can do an awful lot about that misconception in the public, though.

Ms. Gigantes: We would love to legislate the media, but--

Mr. O'Connor: Yes. They legislate us.

Ms. Gigantes: I think it is on the same point. When I read section 5 of the bill and I read the definition section relating to what a paralegal agent is and I read your submission, page 3, paragraph 3, I have difficulty trying to understand what you are trying to say.

It seems to me what you are suggesting is that there are some people operating as paralegals who would continue operating as paralegals, or might start up businesses as paralegals, who would not be covered under this bill. My concern is precisely the opposite, but I think from now on, when people are paid anything for representing somebody, unless they have gone through whatever kind of standards are being proposed in this bill--which we do not really know yet; they will be defined by some outside group--they are going to be charged with not being legitimate paralegals, just as if I went out and claimed to be a lawyer when I am not. I do not understand your page 3, paragraph 3.

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Mrs. Polman: Do you propose that Bill 42 is going to stop all the other paralegals from performing law jobs?

Ms. Gigantes: That is my fear, or representation of the paid agent

before a tribunal such as the Ontario Municipal Board or before a rent review hearing, all these jobs for which people may be eminently well qualified and perhaps deserve a fee on behalf of their community or a group to whom they are providing service.

Mrs. Polman: But the bill does not set out what is going to happen to those people who are performing law jobs directly to the public, if they are not paralegals.

Ms. Gigantes: Yes. It specifies that penalties shall be set up for them if, under the definition of "paralegal agent," it is a person who "acts or holds himself or herself out as acting, on behalf of another person for a fee, in a proceeding in a court of law before a tribunal or other adjudicator in which that person's rights or liabilities are determined." That is how I read the definition section.

Mrs. Polman: But what about the paralegal preparing wills or what about the paralegal doing family law?

Ms. Gigantes: My understanding, once this bill is passed, is that unless that person is qualified, as spelled out however, under this bill, he would be prosecutable by the government of Ontario.

Mrs. Polman: I do not see that spelled out in the bill.

Ms. Gigantes: I would suggest a reference, again, to the definition of "paralegal agent" in the definition section. That is where I get my understanding of what can happen to anybody who is not qualified, and in section 5.

Mr. Chairman: Are there any further questions? Let me thank the delegation for coming before us. The concerns that you have brought to our attention are certainly valid concerns that we have to take into account, along with those that were expressed earlier by other delegations, including Durham College, which expressed a number of problems that are somewhat related to some that you have indicated in your brief as well.

We will be debating this issue, as you may have heard, possibly later on this evening. We are only allowed to sit tonight until six o'clock and, depending on how that particular session goes, we may have to come back, if time allows, a week from now to look further at Bill 42. We will certainly take into account some of your concerns and proceed with caution. We thank you for your views and the comments that you have made to the committee.

We are a touch early, but if the next delegation is here, we can perhaps move on to the Ontario Federation of Labour. We have Julie Griffin, executive vice-president, and John O'Grady, legislative director, with us. We welcome you to our committee and look forward to hearing your views on the issue of Bill 42.

ONTARIO FEDERATION OF LABOUR

Ms. Griffin: On behalf of the Ontario Federation of Labour, I want to express our appreciation for this opportunity to make our views known to the members of the standing committee on the administration of justice. The OFL is the central trade union organization in Ontario, with the overwhelming majority of trade unions in this province being affiliated, and the combined membership of our affiliates is somewhere in the neighbourhood of 800,000 people.

We have requested this opportunity to appear before you because we are concerned that Bill 42, as it currently reads, could have adverse and unintended effects on the ability of both trade unions and ordinary employees to have the representation to which they are entitled in the proceedings of various boards and tribunals that affect the rights and benefits of working people.

We recognize that there has emerged in recent years a class of lay advocates who are providing paralegal services, often on a fee-for-service basis. We recognize, as well, that there may be a need to regulate this type of business in order to ensure minimum standards of competence. However, we are concerned that Bill 42, as it is now drafted, could impair the ability of trade unions to represent their members' interests in various quasi-judicial proceedings. We urge that the bill be given careful study before being referred back to the House.

I want to talk a little bit about representation of employee interests in quasi-judicial proceedings. There are several types of administrative law bodies which directly affect the rights or benefits to employees and which, therefore, involve trade unions. The most important of these include: (1) the Ontario Labour Relations Board; (2) arbitration boards in respect of rights disputes established under the authority of a collective agreement or the deemed provisions of a collective agreement; (3) arbitration boards in respect of interest disputes established under the authority of the Crown Employees Collective Bargaining Act or the Hospital Labour Disputes Arbitration Act; (4) the Public Service Labour Relations Tribunal and its subsidiary body, the Grievance Settlement Board; (5) the Workers' Compensation Appeals Tribunal; (6) inquests into work place fatalities held under the Coroners Act; (7) proceedings before the Pension Commission of Ontario; (8) proceedings before the Ontario Human Rights Commission.

In the future, given proclamation in the not very distant future we hope, trade unions will be appearing before the Pay Equity Commission. We also hope to persuade the government that the Employment Standards Act should be administered by a tripartite body analogous to the Ontario Labour Relations Board. Trade union representatives now appear before umpires appointed under the Employment Standards Act.

Trade union and employee interests can be represented by lawyers, by lay experts employed as union staff or by lay experts retained on a fee-for-service basis. While we recognize that the intent of Bill 42 is to regulate only those persons who act for a fee and that trade union staff should not be affected by the bill in its present form, we still have some concerns that, at some point in time, dues could be interpreted as a fee for service. We would like to have that cleared up while we are here today.

The regulatory power proposed in the bill could still cause difficulties. There has been developed, in close relation to the trade union movement, a group of independent lay experts who work closely with the labour movement but whose formal relationship is fee-for-service. These consultants have been particularly helpful in bringing expertise to smaller unions which lack the resources to maintain permanent staff. This small group of consultants has been brought into being by the trade union movement and supported by the movement.

These independent lay experts act both as consultants and, from time to time, as advocate-representatives. While cost has often been a consideration in preferring lay experts over lawyers, it is also true that, in many areas,

the law profession's degree of expertise is limited. We do not believe that any useful public purpose would be served by confining trade unions in their selection and use of lay experts.

One of the issues on which the committee has heard earlier representations is the importance of nonlawyers in preserving the character of administrative law bodies. We shall comment on this issue in regard to employees' rights.

We in the trade union movement are already concerned at the tendency for labour relations tribunals to become overly complex in their procedures and to lose the commonsense practicality which is the very rationale for administrative tribunals in the first place. Procedural complexity introduces undue delays, raises costs, reduces accessibility and erodes the very purpose of the legislation. There is, in our estimation, a direct link between the tendency to become overly complex procedurally and the increased use of lawyers. This is not a desirable development and it is not one which this committee should inadvertently accelerate by restricting the use of lay experts where problems with this practice have not arisen.

It should also be noted by the committee that there is a presumed difference in sophistication between a citizen and an organization when hiring agents. Organizations are much more likely to be familiar with the workings of the law and with the reputations of agents than are many individuals. There is no history of trade unions feeling disserved by unqualified lay experts.

Certainly the union that I have come out of, the Canadian Union of Public Employees, uses a number of firms of lay experts for assistance in arbitration proceedings, for assistance sometimes in grievances and for assistance in representations before committees of the House that have been structured to study such things as Bill 170, the reform to the Pension Benefits Act. To the best of my knowledge, there have been no complaints by any of the trade unions that these lay experts have not served their constituencies well.

1700

We have no reason to believe, then, that this problem is likely to arise and, as a consequence, we would not welcome the interference of public regulations in either our selection or our use of lay experts to represent trade union and employee interests before administrative law bodies. We would be especially concerned if this type of regulation were subsequently extended to restrict our recruitment or the use of salaried staff representatives.

Again from personal experience, my own union, CUPE--and not just CUPE, but the auto workers, the steelworkers, all the major unions use their own staff people for such things as representations in front of the labour relations board, for grievance arbitration, for interest arbitration and for coroner's inquests when there are work place accidents that result in death. All the trade unions use their own salaried staff people, and we would find it a very major intrusion into the rights of those unions to determine how they were going to appear in front of these tribunals if this bill was extended to include them. It would be an unwarranted intrusion.

On that basis, we urge that the following changes to Bill 42 be given consideration by the committee. The first is to section 1, the definition of "paralegal agent." We would add the underlined phrase, so it would now read:

"'Paralegal agent' means a person, other than a member or a student member of the Law Society of Upper Canada or a person who acts under the supervision of a lawyer"--and this is the phrase we would add: "or a person retained by a trade union"--"who acts or holds himself or herself out as acting, on behalf of another person for a fee, in a proceeding in a court of law or before a tribunal or other adjudicator in which that person's rights or liabilities are determined."

The foregoing recommendation deliberately uses the phrase "retained by a trade union" rather than "representing a trade union" because of the numerous instances in which a lay expert is retained by the union but is formally viewed by the administrative law body as representing the individual worker. Complaints under the Employment Standards Act, appeals under the Workers' Compensation Act or proceedings under the present Pension Benefits Act would all be examples of those arrangements.

Whether a rights grievance is brought by a trade union or an individual employee depends entirely on the provisions of the relevant collective agreement. It is not, therefore, sufficient to ask simply, "Who is the party to a proceeding?" The pertinent question is, "Who is retaining the lay expert?" For this reason, we are requesting a blanket exemption for persons retained by trade unions.

All this is respectfully submitted by me on behalf of the other officers of the Ontario Federation of Labour.

Mr. O'Connor: Thank you, Ms. Griffin and gentlemen, for your presentation. It is very well thought through; it is specific and it deals with one point only. It is an interesting point and one I do not think we have discussed. I presume there might be others in other categories in other types of tribunals who represent groups and individuals who frequently appear before that tribunal.

Can you tell me, by way of background, what kind of training a member of your union might receive from the union prior to attending before the labour relations board or any of the other tribunals you have mentioned here, to ensure he is qualified to do the job for you or your individual member?

Ms. Griffin: I can speak directly to CUPE's training because I was on the staff of CUPE for 13 years before becoming a full-time officer of the federation. It has a process of annual staff training which deals with a number of things: how to present arbitration cases and how to appear in front of boards like the labour relations board.

Often, a new staff member will go with someone who has been on staff for some period of time and who is used to making presentations, so you have on-the-job training as well as classroom-type training. Recently, CUPE has implemented a session for people who want to be staff reps where they train them prior to hiring them. They now go through three different kinds of training.

As a federation, we put on schools for full-time officers and for staff members of our affiliates on these very issues, representations before the labour relations board or the pension commission, that kind of thing.

Mr. O'Connor: How long would the training session be for your CUPE reps before they would appear before the labour relations board, for instance?

Ms. Griffin: The staff training is usually a week. A lot of times they will already have had exposure to that through attending with a staff rep who had been making presentations on behalf of them when they were local union people. People who get hired by unions do not fall out of trees. These are people who have been active for some considerable period of time and have had a lot of exposure to the processes the union uses.

Mr. O'Connor: A week does not seem very long, but as you say, there has been a lot of practical experience prior to that which is included.

Ms. Griffin: Yes, prior to that. That week would be an annual ongoing session.

Mr. O'Connor: Of course, our concern is ensuring, for the protection of the public--in this case, the protection of individual members of the union--that the person who is representing them knows what he is talking about and is qualified.

In that you do the training and ensure that there is good representation, would a compromise in this regard perhaps be a requirement that before anybody could be retained by a union to act in these tribunals, he must pass some kind of qualification exam or objective test standard set out by the paralegal agents' governing body, whatever it might be, recognizing that you would have done the training but that there has to be some objective standard met?

That is something of an interference with your governing of yourselves and determining who is qualified and who is not, but it might be a compromise which meets the needs of Bill 42 and also meets your needs of not having to require your people to go to a two-year course at a community college.

Ms. Griffin: We do not think it is necessary. Outside our own staff people, the people we hire to represent us are people who are well known to us. They are people who have come up through the ranks of the labour movement. They are often retired trade union leaders or staff people who have decided to take another career in life, to specialize in one area rather than be a general servicing rep within a trade union.

We honestly do not believe that would be necessary. We would not go and hire somebody who did not have a reputation such that we felt he could represent the interest of our members properly.

Mr. O'Connor: That is so, I presume, in CUPE, which is a big, well-organized union. There may be, though, some members of the OFL and some smaller, less organized unions that may not provide the training you set out for us. They may not hire people with the care and the background checks that you have indicated. Their members may benefit from some requirement for education or certification. Would you agree with that?

Ms. Griffin: Not particularly. I was talking about the training CUPE puts on for its own staff members, but so do all the other major affiliates of the federation.

The smaller unions would tend to use the education services provided by the federation to train their staff people. Over and above that, there is a very small group of lay people whom the trade unions use to represent them when it is not appropriate to use their own staff or when they do not have

staff to represent them. It goes by reputation. Trade unions tend not to hire people who have not already had a reputation by being hired by somebody else who has the expertise.

Mr. O'Connor: Okay. Thank you.

Ms. Gigantes: It is as clear as day.

Ms. Griffin: Thank you.

Mr. Chairman: Thank you very much for putting your position before us. The concerns you have registered have been raised in a somewhat different way by other groups which had similar concerns, for example, representatives of landlord-tenant groups which have no particular expertise in the legal field but which may have a vested interest with respect to a tenant-landlord matter.

I think it is a parallel situation to the one you are describing as it relates to the union movement. Certainly, we will be taking that into account as we briskly walk through this bill.

I would remind the committee that at the time we suspended our discussions on Bill 42, the debate was adjourned by Mr. O'Connor. Pardon me. Mr. Ward adjourned the debate. Mr. O'Connor was speaking. I humbly apologize to the members of the committee. It would appear that the floor is in the hands of Mr. Ward.

Clerk of the Committee: No, Mr. O'Connor.

Mr Chairman: Sorry, back to Mr. O'Connor. You adjourned the debate--

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Mr. Ward: I thought you had interrupted me.

Mr. Chairman: No, you interrupted him with your motion and, therefore, he has the opportunity to get the floor back. I will go to Mr. O'Connor. You were dealing at that time with amendments to section 5.

Mr. O'Connor: Members of the committee will recall that a concern was expressed with regard to section 5 on the circumstances of the presentation we had from the residents' association in Kingston. The well-meaning, self-interested member representing the group, who had educated himself and had made an arrangement with his group of tenants, or whatever other interest the group had, to appear on its behalf for an honorarium in front of a particular committee.

The definition of this bill would have excluded him and people under similar circumstances. I think also mentioned and excluded are university professors who, as a sideline on occasion, have appeared before environmental assessment boards or similar tribunals around the province. They are certainly qualified experts and ought not to be excluded. Therefore, legislative counsel and I have attempted to put together an amendment to section 5, now before you, which would permit this type of activity, not preclude it.

What it does, basically, is add two subsections to section 5. One indicates that the general provisions of section 5 do not apply to a person who is not registered under the act who acts on behalf of another person for a

fee in a proceeding in a court of law or before a tribunal or other adjudicator, using the wording from the definition, if the person does not carry on the business of a paralegal agent.

Then we felt that it was necessary to go on and give some guidelines, not definitive, as to what was carrying on business. The other subsection therefore provides that anyone who appears three or less times in the tribunal in any 12-month period is not deemed to be carrying on business.

In that way I suggest we have made a genuine attempt and have succeeded in accommodating the landlord and tenant situation, as expressed to us by the man from Kingston, as well as the expert from a university or other source, who would appear not more than three times per year for a fee on behalf of a group. I suggest that this accommodates the requirements and concerns of the committee members, particularly Ms. Gigantes, who I think raised this particular point.

Mr. Chairman: Mr. O'Connor moves that section 5 of the bill be amended by adding thereto the following subsections:

"(2) Subsection (1) does not apply to a person who is not registered under this act who acts on behalf of another person for a fee in a proceeding in a court of law or before a tribunal or other adjudicator if the person does not carry on the business of a paralegal agent.

"(3) For the purposes of subsection (2), a person shall be deemed to be carrying on the business of a paralegal agent if he or she acts as an agent for a fee in more than three separate proceedings in any 12 consecutive months."

I have a question, Mr. O'Connor. Do you feel that this covers the concerns that were brought to our attention by the last group that spoke to us?

Mr. O'Connor: No, it does not. It would partially meet their concerns. I think we should talk about those concerns.

Mr. Chairman: I am thinking of a situation where a local union affiliate of a labour group has on many occasions had representatives advise it on matters, for example, on workers' compensation. They could advise on labour board matters and a host of other things. The occasions for that, I suggest to you, could be far more frequent than three times in a 12-month period.

Mr. O'Connor: Keep in mind we are dealing only with the attendance in court, not the providing of advice. The attendance at the tribunal set out in section 8.

Mr. Chairman: I think this argument still holds, though. The attendance at a tribunal could still be more frequent than three times a year.

Mr. O'Connor: You are right. To that extent, we have not met the concerns of the Ontario Federation of Labour. I am amenable, and I think we should all be, to an amendment that can meet that requirement.

I suggested a compromise to them which they do not seem to think is adequate, simply because, I think, coming from a large organized union, they would never run into the problem of lack of competency. They are very careful about the people they hire and the training of them. As I suggested, there may

be a number of other unions that are not in that position. For that purpose, I suggest there should be some certification requirement, if only after having been trained by the union, to meet an objective standard and pass an exam set by the paralegal committee, to show that they are competent.

Ms. Gigantes: I would like to start--and it is not quite on the point, but I will get to the point very quickly--by saying that I believe I made a mistake in the discussion that I had, in the questions and the way I posed them, with the law clerks.

What I was doing was assuming, and this leads into our current discussion, that the bill would be designed to cover the performance of legal services which did not lead to a proceeding. I was thinking back to the discussion we had had earlier with people who were providing fee for service, a service for a fee, in the field of immigration law.

We had a discussion in which we came to the conclusion, with the spokespeople before us, that the person who provided that service hoped always to avoid proceedings. In fact, the nature of the service was to provide an understanding of the immigration law so one would not have to be involved in a proceeding, and could qualify simply in the ordinary process of administrative consideration for landed status, citizenship, family reunification, or whatever.

This leads me to the amendment before us. The bill still would not cover problems that have been noted before us, in terms of the provision of services in the field of immigration, because the bill still speaks only to proceedings. It is on this point that I mistakenly questioned and made comment on the submission of the law clerks.

Second, the amendment before us still seems to treat the question of who can practise, aside from qualified people, people qualified to be paralegals under this legislation. It treats people who may have expertise in particular areas as people we will allow to practise for a fee, as long as they do it on an amateur basis and as long as they do it only three times a year. I have great difficulty with this, not simply because of the presentation on behalf of the OFL but also because I do not know how we could presume to say this.

Mr. O'Connor talks about the expert university witness or the person who provides landlord-tenant service. I do not think we want to treat a person such as a university professor differently, in terms of the expertise that can be assumed about this person's provision of services as an agent, to the kind of person who may develop an enormously strong sense of what is involved in the Planning Act or matters that come before various boards and commissions in Ontario and who should have a perfect right, without having to go through specified college courses, to appear on behalf of groups which are likely to learn of his competence and expertise by way of mouth from other groups or by way of mouth from people who have had good experience using his services or by publicity on other cases. There are a number of ways that are perfectly decent ways of deciding whether you want to hire somebody to present your case.

On those two grounds, I am still confused about what the purpose of the amendment is.

1720

Mr. O'Connor: Mr. Chairman, may I respond to that? Without the amendment, these people could not appear at all. The case was made that there

are well-meaning and self-educated people--Ms. Gigantes has just confirmed that she understands that to be case--whom we should not bar. The question is, where do we draw the line between their being involved full-time for a living, in which case they should be qualified, and their doing it once or twice or three times? Are you suggesting there should not be any line, that they should always be allowed to appear as many times as they wish?

Ms. Gigantes: If someone wants to hire them.

Mr. O'Connor: Then you get into the whole rationale for the bill.

Ms. Gigantes: That is right.

Mr. O'Connor: People who are not qualified hold themselves out as paralegals, convince the unsuspecting public that they are qualified and have not had any training at all.

Ms. Gigantes: There are two different matters here, I put to you. One is the attempt to provide protection to individual members of the public who are looking for something that we would call a paralegal service. The other is the right of groups in the public, whether they are labour unions, municipal organizations, tenants' associations, women's groups, you name it, to decide that certain individuals or certain firms of what you might normally call consultants can be paid agents in representation in the cases that are of concern to them.

I think what we are getting here is that these two matters in fact overlap. If you create a system of trying to control a service which is provided to individuals in the public, you are interfering, necessarily, with the operations of other services and demanding credentials and approvals and a whole systematic regulation in areas where, I think we would all accept, it is not needed.

Mr. O'Connor: That is the crux of the question. If those areas are lucrative and people can make a good living out of them, it is going to attract people who are not as qualified as they should be. It is the same argument that can be made for people who appear in small claims court or highway traffic court. Sure, most of them are competent and qualified and are doing a good job, particularly the ex-police officers, I suppose. But because it is an attractive and expanding field, you are attracting many people who see it as an opportunity to make a living but who may not be so qualified. I think our obligation is to protect the public against them.

You say this will not happen with the landlord groups or environmental groups and so forth, but it could well happen. Why could it not?

Ms. Gigantes: They might hire a lawyer who does not do the job that they want, too. You have seen that. I have seen that. We have all seen it.

Mr. O'Connor: Yes.

Ms. Gigantes: More and more, I wonder why we are trying to get into this systematic regulation. The more we examine what the implications are, the more I question whether this is going to be useful to anyone.

Mr. Chairman: We have a motion put by Mr. O'Connor to amend section 5. We have had some comment on it. Any further comment?

Mr. Ward: Prior to our adjournment last time, I indicated that we had some concerns relative to some of the correspondence and the rumblings that had come back to us from the symposium at Durham College on the regulation of paralegals. I am not at all convinced that the concerns relative to Bill 42 that have been addressed can in fact be overcome by the proposed amendments.

Therefore, I wish to serve notice that I intend to move that the bill not be reported and that a task force be established to gather the input of educators, law clerks, lawyers, paralegals, the bar association and any other groups or organizations as may be necessary to assist in defining the scope of practice, qualifications, education and code of conduct for the regulation of paralegals in Ontario.

I just wish to indicate our difficulty in supporting amendments we do not believe go any distance at all to overcoming the shortcomings of the bill.

Mr. Chairman: By way of clarification, and then I will go to Mr. O'Connor and Ms. Gigantes right away, the committee does have the authority to not report the bill or to indicate it would be in support of such a motion. The committee does not, however, have the authority to establish a task force.

We would have to indicate by separate letter--and I presume the motion would cover a direction to the Attorney General (Mr. Scott) should the first motion pass--that it would be our recommendation that a task force be established, if that would be the wish of the committee. I just wanted to make it clear that it would be two separate actions.

Mr. O'Connor: There is a motion before the committee, unless--

Mr. Chairman: We are not dealing with this motion now.

Mr. O'Connor: I will speak on his motion when he makes it, if I may.

Mr. Chairman: All right. We are still dealing with Mr. O'Connor's motion. This is a comment of intent, which I think is fair ball at this point, in that it may have a bearing on what happens with this motion as well. It is an effective but sneaky way of indicating what you intend to do.

Mr. Ward: It was not sneaky; it was up front.

Mr. Chairman: Ms. Gigantes, I believe you wanted to speak on this as well.

Ms. Gigantes: Did you not recognize Mr. O'Connor first?

Mr. Chairman: I did already.

Ms. Gigantes: That is fine.

Mr. Chairman: He was very brief, which was a shock to me.

Ms. Gigantes: The question I am going to ask members of the committee here, and I hope that somebody around will know--I am sure somebody does--does not relate directly to the motion but it is a question that sits large in my mind: Why are we doing this? If we said in the legislation that what we wanted to ensure was that people who, as lawyers, for example, had had a licence removed, for a cause, by the Law Society of Upper Canada were not to

be out there practising, providing service in the area of the law--what does the law society do with disbarred lawyers who set up as paralegals?

Mr. O'Connor: I can answer that question. It is very easy, and I will be brief again: nothing. They have no authority to do anything. For the 97th time, that is why we need the bill. They have no authority over them whatsoever. In fact, the situation we described exists in St. Catharines. Two disbarred lawyers, who just got out of Kingston, and a third person who is not a lawyer, who also got out of Kingston, have set up and are running a paralegal firm.

Mr. Ward: On this point, as you indicate, the law society can do nothing to a disbarred lawyer. Yet under the mechanisms of Bill 42, you are establishing a committee of paralegals which I suppose will rule on matters of discipline and code of conduct and ethics.

Mr. O'Connor: No. Read the bill. The law society rules on discipline under section 7.

Ms. Gigantes: That is correct.

Mr. O'Connor: It is the law society.

Mr. Ward: The law society, independent of the paralegals, will discipline them. What is the committee's role?

Mr. O'Connor: The governing committee's role is to set the educational standards, the certification standards and so forth. Keep in mind that is subject to any amendment to take away the majority of paralegals if that is deemed necessary but, under section 7, it is the discipline committee of the law society that does the disciplining.

Mr. Ward: What criteria would the law society have in barring a disbarred lawyer from carrying on the duties of a paralegal?

Mr. O'Connor: Section 4. Read it.

Mr. D. R. Cooke: He has to be of good character.

Mr. Ward: Of good character?

Mr. O'Connor: Yes. It has been long determined under the Law Society Act that if you have a criminal record, you cannot practise law, the same provisions that apply here.

Mr. Ward: If you are a disbarred lawyer, it does not necessarily follow that you have committed a criminal act, does it?

Ms. Gigantes: That is right.

Mr. O'Connor: No, it does not necessarily follow, but the committee can establish what it determines to be good character and so forth.

Mr. Ward: But can you bar a paralegal who is a disbarred lawyer who perhaps has done no wrong in terms of carrying out his duties as a paralegal?

Mr. O'Connor: Sure. The committee can decide in its own wisdom what constitutes good character. I would suggest that is one of the criteria it

would decide. Right now, there is no committee and disbarred lawyers can practise. Clearly, that would be one of the criteria. I do not see how it could not be.

1730

Mr. Chairman: Mr. Polsinelli has a question.

Mr. Polsinelli: Mr. O'Connor, I believe a number of days ago we were dealing with the situation of urban planners, for example, who routinely did municipal rezoning applications. Your amendment would not cover that. They would still require registration as paralegals, would they not?

Mr. O'Connor: Yes, if they did more than three a year for a fee.

Mr. Polsinelli: Notwithstanding that an urban planner has his degree and experience, he would still have to fulfil another requirement and register.

Mr. O'Connor: Under this act, no, but the potential is there to include the boards before whom he appears. Right now, the act does not include the planning board. It includes the provincial offences court, small claims, etc. There is the potential for adding additional boards. Yes, if he did make his living by attending before that board, there should be some standards and qualifications he should meet. It would be open to the governing body to say, "Your degree as a urban planner qualifies you to appear before the Ontario Municipal Board," under clause 3(1)(c).

Mr. Polsinelli: Was not the discussion we had last time, revolving around section 5, the prohibition clause, the one dealing with unauthorized practices--

Mr. O'Connor: What I am saying is that under clause 3(1)(c), the governing body has the right, overall, to set the qualifications of paralegals and the proofs to be furnished, such as education, and so forth.

Mr. Polsinelli: I am not saying they would not be able to register under this act, if the governing body had agreed they had the sufficient qualifications to register. I am just questioning whether registration under this act is a necessary thing for an individual such as an urban planner. As I read this act, it would be required.

Mr. O'Connor: It is no big deal. If an urban planner has received his degree from the University of Toronto, he simply submits it under this act and will be so qualified and is thereafter entitled to appear before the OMB or any other board so stated by this act.

It is a simple procedure. Why not require him to do that for the protection of the public? Anybody who has not gone to university and received that degree as an urban planner can call himself an expert in planning, for instance, avoiding the words "urban planner," if that is a formal degree, and can appear before the OMB unqualified and uneducated.

Mr. Polsinelli: Would he also be able to appear before small claims court, landlord and tenant or provincial offences court?

Mr. O'Connor: No.

Ms. Gigantes: Can I ask a supplementary on this point? Since when is

a fee a salary? My understanding of a fee is that it is connected with a particular service.

Mr. O'Connor: Yes.

Ms. Gigantes: Then why do you say a planning department member making an appearance on behalf of a municipality would qualify as carrying out a paralegal activity?

Mr. O'Connor: He would not. I did not think we were talking about him. I thought we were talking about the individual urban planner who runs his own office and who provides planning-consulting services to municipalities or individuals. That is who we are talking about.

Ms. Gigantes: Okay.

Mr. O'Connor: Your example, Evelyn, would not be included nor, for that matter, would the union rep if he is on salary.

Ms. Gigantes: No, they are not talking about salaried people.

Mr. O'Connor: I know. Some would be.

Mr. Polsinelli: Would a corporation be able to register?

Mr. O'Connor: No.

Mr. Polsinelli: That means any paralegal agent right now, who is operating under the guise of a corporation--

Mr. O'Connor: They would have to individually qualify.

Mr. Polsinelli: Would they still be able to work for the corporation?

Mr. O'Connor: They could still work for their firm, an incorporated company.

Mr. Polsinelli: If they are working for their firm and they are individually qualified, then I see a bit of a problem. They are not doing it for a fee. They are receiving a salary from their firm. Why would they have to register?

Mr. O'Connor: Because the firm is receiving a fee.

Mr. Polsinelli: Then how would that be different from a nonprofit community group rendering services to individuals filing an appeal before the Social Assistance Review Board? Would a social worker who works for an organization for a salary and who is providing a paralegal service by providing representation before the Social Assistance Review Board also have to register?

Mr. O'Connor: Yes.

Mr. Polsinelli: Then any individual who is appearing before any type of tribunal as mentioned by the act would have to register?

Mr. O'Connor: Yes. They would have to have taken the course and become qualified in that manner or, if they were otherwise qualified, like the

urban planner, by having received a degree from the University of Toronto. Presumably that degree would be recognized by the governing committee and they would be given carte blanche certification.

You are shaking your head, but it is a simple procedure. It is within the powers of the governing committee under clause 3(1)(c) to set up these kinds of recognitions and certifications.

Mr. Polsinelli: I tend to disagree with you. There is no proof at all that it is going to be a simple procedure.

Mr. Chairman: Ms. Gigantes, did you have your hand up earlier?

Interjection.

Mr. Chairman: I will go to Ms. Gigantes first, then to Mr. Cooke.

Ms. Gigantes: Mr. Chairman, I was going to seek your assistance. The amendments we have before us to section 5 of the bill were in response to questions I started worrying about as we went through clause-by-clause of the bill. I am still not happy with section 5 even with the amendments nor can I think of ways that I am going to be very satisfied.

The more we get into the discussion, the less happy I am with the way this bill proposes to systematize and give official recognition to paralegal agents and get rid of the services of people who would not be qualified. At this stage, can we as a committee say we do not want to report a bill?

Mr. Chairman: Yes, a simple motion to indicate the committee does not wish to report the bill back is in order and is debatable.

Ms. Gigantes: If we wanted to say, "We will leave it in the hands of the committee and give it some more thought, but we do not want to finish dealing with it now," is that in order? Do you say you will table it or that you do not want to report it now? What would be the best way of achieving that?

Mr. Chairman: The clerk has indicated to me that we can adjourn the debate, which leaves it open. We have not then finalized our discussion on the bill, which is exactly what we did some time back, and we have come back to it at this point.

Could I ask whether you could be a little more specific as to what your intentions are, to have more time to do something like a task force or further committee study or perhaps propose further amendments that you might feel comfortable with? That might help me to understand where you want to go.

Ms. Gigantes: I think Mr. Ward is going to propose that the bill not be reported and that we send a letter requesting a task force or something. I personally would prefer not to do that. I would prefer to leave it with the committee and I would like to hear Mr. O'Connor's feelings about that.

I just want us to be in the position where, if we decide a few months from now that we have evidence that is compelling for why we should get into this bill any further, we could reactivate it.

Mr. Chairman: By adjourning it, we leave the committee open to come back to the bill for further amendment. By following what Mr. Ward intends to do, not report the bill, with a further direction on the other action with

respect to the task force, you effectively kill Bill 42, although you do not necessarily kill some amended form of Bill 42 that the government may bring back.

Ms. Gigantes: But you have to start the process all over again.

Mr. Chairman: Yes.

Ms. Gigantes: That is not what I would like to see.

Mr. O'Connor: May I withdraw my motion to amend section 5 and make another motion?

Ms. Gigantes: Go ahead.

Mr. Chairman: Yes, that would be in order. You are the mover, so you can withdraw your amendment to section 5, which you have now done. You have the floor, followed by Mr. Ward then.

Mr. O'Connor moves to adjourn further debate on Bill 42.

Mr. Ward: It is not debatable.

Mr. Chairman: It is not a debatable motion. That being the case, that means we are done, as of that motion, for tonight.

Mr. O'Connor: I realize that.

Mr. Ward: On a point of order, Mr. Chairman.

Mr. O'Connor: If I do not do that, I am done right here.

Mr. Chairman: Point of order, Mr. Ward? This is not debatable.

Mr. Ward: This is a legitimate point of order.

Mr. Chairman: I will listen carefully to it.

Mr. O'Connor: That is not a debatable motion.

Mr. Chairman: He is not debating the motion. He is raising a point of order.

Mr. O'Connor: It had better be a good one.

Mr. Ward: It is. I think you will like it.

Mr. Polsinelli: Under what standing order?

Mr. Ward: Don't ask me.

Mr. Chairman: We all use the democratic process in the way it best suits our individual needs. Mr. Ward has his point of order. He is legitimately on the floor, and I have recognized him.

Mr. Ward: In my discussions with the clerk, I indicated to her my intent to bring in a motion to stand down further consideration. She advised me that, to achieve the results, the correct way of phrasing it was that the bill not be reported.

Having heard the concerns of Ms. Gigantes and Mr. O'Connor about whether that intent was conveyed appropriately, I wonder whether standing down consideration of the definition clause in this bill would be appropriate until such time as we make a recommendation for a task force to be established to examine those issues. Is there a big difference or not?

Ms. Gigantes: Yes, there is a big difference.

Mr. Chairman: I might add that on the point of order it cannot be considered. It is an interesting point of order, as the Speaker would say, but it is probably a questionable point of order. You can speak to it, if this motion does not pass.

If you are ready, I will put the motion to adjourn the debate. All in favour?

Motion agreed to.

Ms. Gigantes: On a point of order, Mr. Chairman: Does this mean we have decided we will not reconvene in September to pick up the adjourned debate?

Mr. Chairman: No, we have not put a time frame on it. The first opening the chairman has to bring the bill back, I will probably do so.

Mr. O'Connor: Monday?

Mr. Chairman: It could be Monday.

Ms. Gigantes: Could I then move that we reconsider our earlier motion, and before we reschedule or open up committee work on this bill again, we make a decision about when we want to do it?

Mr. Charlton: You need the unanimous consent of the committee to do that.

Ms. Gigantes: No, because the committee had previously decided that if we did not finish it today we would deal with it in September.

Mr. O'Connor: I think what we decided at the beginning of today's meeting was that if we did not finish today, which we have not, we would reconvene in September, unless we sat next week, and then it would be next week.

Ms. Gigantes: I move that the committee reconsider its previous decision about work scheduled on this bill, that we leave the bill as it is now, that we do not schedule a time either next week or in September for dealing with the bill and that we move to other work, as the work flows, until such time as we want to pick it up again.

Mr. O'Connor: Mr. Chairman, I think we have already dealt with that issue and voted on it.

Ms. Gigantes: My motion is a motion to reconsider.

Mr. Chairman: A motion to reconsider is in order.

Ms. Gigantes has put a motion. It does not require unanimous consent, I

might add, a question that was raised by a member of the committee. It is a straight vote. All in favour of the motion by Ms. Gigantes? Opposed? Carried.

Motion to adjourn? Mr. Polsinelli moves--

Mr. O'Connor: Okay, but all we have done is voted to reconsider. We did not reconsider, so the old motion stands.

Mr. Chairman: The committee, at some further point, will have to consider another motion, with respect to the specifics of a time to meet.

Mr. O'Connor: That was not her motion. Her motion was to reconsider our previous motion.

Mr. Chairman: But her previous motion was simply a specific--

Mr. O'Connor: As long as it is on Hansard and it is correct, then I suggest we are still locked into next week or September. I am content with that.

The committee adjourned at 5:44 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

LANDLORD AND TENANT AMENDMENT ACT

TUESDAY, JUNE 23, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
VICE-CHAIRMAN: Fish, S. A. (St. George PC)
Charlton, B. A. (Hamilton Mountain NDP)
Cooke, D. R. (Kitchener L)
Gigantes, E. (Ottawa Centre NDP)
O'Connor, T. P. (Oakville PC)
Partington, P. (Brock PC)
Poirier, J. (Prescott-Russell L)
Polsinelli, C. (Yorkview L)
Rowe, W. E. (Simcoe Centre PC)
Ward, C. C. (Wentworth North L)

Substitutions:

Jackson, C. (Burlington South PC) for Mr. Rowe
Reville, D. (Riverdale NDP) for Mr. Charlton

Clerk: Mellor, L.

Staff:

Schuh, C., Legislative Counsel
Evans, C. A., Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:
Scott, Hon. I. G., Attorney General (St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 23, 1987

The committee met at 3:40 p.m. in room 228.

LANDLORD AND TENANT AMENDMENT ACT
(continued)

Consideration of Bill 10, An Act to amend the Landlord and Tenant Act.

Mr. Chairman: Today we are going to begin clause-by-clause discussions on Bill 10, which as you know is a bill being proposed by Mr. Reville. We can begin with the committee discussions as soon as you are ready to get under way.

Mr. Reville: I am ready.

Mr. Chairman: All right. Mr. Reville, do you want to say anything with respect to your bill before we get into this?

Mr. Reville: Yes. I want to say two things. First, I have circulated a four-page document entitled "NDP Amendment." Second, the clerk has circulated a document on the letterhead of Homes First Society, which I would like to speak to briefly at some point. Perhaps now is a good point.

Mr. Chairman: All right; carry on.

Mr. Reville: The point the Homes First Society is making that I want to bring to the attention of the committee and of the Attorney General (Mr. Scott) is that in those cases where people in a residential setting are going to continue to be viewed as licensees, it is appropriate that a process be in place so that their rights are protected.

What the Homes First Society has suggested for our edification and particularly for the Attorney General's edification is an administrative process so that if people are going to be evicted, they have some opportunity to challenge the eviction and to make sure that their rights will be protected.

I draw this to the attention of the committee and the Attorney General. I think it is something the Lieutenant Governor in Council could deal with in a regulation. I hope they will draw their attention to it and direct their minds to it so that in those situations we have allowed for in the amendments, which I will lead, people will indeed have an opportunity to state why it is they should not be evicted if it is suggested they should be.

If it is appropriate, I would be ready to move my amendment so the committee can discuss it.

Hon. Mr. Scott: Before it is moved--

Mr. Jackson: I would like to respond to the memo from Homes First, which I received as well; it was delivered to me in my office at about 7:15 this morning. It should also be put in context with the presentation that was made by Homes First before this committee, at which time they indicated they were seeking an exemption. However, they would like this sort of mechanism put

in, whether it be by regulation or otherwise. They further went on to suggest that they in no way wished the progress of the bill to be impeded by that request.

Therefore, given that the question has been raised at this point in time, I have a question for the Attorney General. Is he able to determine that the charter for Homes First is sufficient that they are covered by the amendment for groups covered under the Charitable Institutions Act? That became an important point to the representative of Homes First who attended my office very early this morning to talk to me about that very point.

If the chairman's ruling was that we were going to discuss that correspondence, then I would like the clarification on one of the points that was raised in that correspondence.

Hon. Mr. Scott: First of all, I want to thank the committee for permitting me to be here. Can I say to Mr. Jackson first off that I am not able at the moment to give him the assurance he requires. I will attempt to do so by the end of the day. If by any chance clause-by-clause is finished before the end of the day and before I can bring that information to his attention, he will certainly have it before third reading and will have my concurrence, for what it is worth, to seek any other amendments that he may regard as appropriate at the third-reading stage. I have had the memo no longer than he has--in fact, a little shorter--and I am not able to respond to his question.

Mr. Chairman, because I am going to have to ask to be excused, may I turn just for a moment to the thrust of the bill? There are now three bills in the Legislature: Bill 10, which is Mr. Reville's bill, the one before you; Bill 59, which is Mr. Jackson's bill; and Bill 87, which is the government's bill. All the bills, as I read them, direct themselves towards the same theme and the same operative principle; that is, that roomers and boarders, generally speaking, should be included within the provisions of the Landlord and Tenant Act.

Our bill is introduced not to be obstreperous or difficult but simply because that was our undertaking in the speech from the throne and that was a personal undertaking I made to some members of the community. As luck would have it, Bill 10 comes before you first in that sequence, and I am grateful to my colleagues Mr. Jackson and Mr. Reville for the opportunity we have had over the last couple of days to discuss certain amendments to Mr. Reville's bill that will be proposed by him and, in at least one case, by Mr. Jackson. We were grateful for that opportunity.

The government is glad to be able to say that we will be supporting those amendments, and hopefully at the end of the exercise we will be very close to having a bill that meets with the unanimous approval of the three parties in the House. Thank you, Mr. Chairman, for this opportunity.

Mr. Chairman: Thank you, Minister. The chairman finds the spirit of co-operation absolutely overwhelming. I will now move on and give the floor to Mr. Reville. You are excused if you wish to leave, Minister. We will try to carry forward in our usual fine style in the absence of the Attorney General. Mr. Reville, perhaps you would like to move your amendment and then speak to it.

On sections 1 and 2:

Mr. Reville: In the continuing spirit of co-operation, I move--this will be a rather long movement. Is it possible to dispense with the reading of this?

Ms. Gigantes: No. Put it on the record.

Mr. Chairman: Mr. Reville moves that sections 1 and 2 of the bill be struck out and the following substituted therefor:

"1(1) Subclause 1(c)(i) of the Landlord and Tenant Act, being chapter 232 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

"(i) any premises used or intended for use for residential purposes, including accommodation in a boarding house, rooming house or lodging house.

"(2) Clause 1(c) of the said act is amended by adding thereto the following subclauses:

(v) premises whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent, or the spouse's child or parent, where the owner, spouse, child or parent lives in the building in which the premises are located,

(vi) accommodation provided by an educational institution to its students or staff where,

(A) the accommodation is provided primarily to persons under the age of majority, or

(B) all major questions related to the accommodation are decided after consultation with a council or association representing the residents, unless the accommodation has its own self-contained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households,

(vii) accommodation provided to the travelling and vacationing public in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast establishment or farm vacation home,

(viii) accommodation that is subject to the Public Hospitals Act, the Private Hospitals Act, the Community Psychiatric Hospitals Act, the Mental Hospitals Act, the Homes for Special Care Act, the Homes for Aged and Rest Homes Act, the Homes for Retarded Persons Act, the Nursing Homes Act, the Ministry of Correctional Services Act, the Charitable Institutions Act, the Child and Family Services Act, 1984, the Developmental Services Act, the Ministry of Health Act, or the Ministry of Community and Social Services Act,

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"(ix) accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care, or

"(x) short-term accommodation provided as emergency shelter.

"la(1) Clause 81(e) of the said act is amended by adding at the end thereof "and includes a licence to occupy residential premises."

"(2) Section 81 of the said act is amended by adding thereto the following clause:

"(f) 'tenant' means a tenant as defined in clause 1(e) and in addition includes a boarder, a roomer and a lodger.

"1b. Subsection 84(1) of the said act is repealed and the following substituted therefor:

"(1) A landlord shall not require or receive a security deposit from the tenant under a tenancy agreement other than the rent for one rent period, but not in any event exceeding one month, which payment shall be applied in payment of the rent for the last rent period immediately preceding the termination of the tenancy.

"1c. Section 93 of the said act is amended by adding thereto the following subsection:

"(2) Where a tenancy agreement requires the landlord to clean the rented premises at regular intervals, the landlord may enter the premises in order to perform that obligation in accordance with the tenancy agreement, without giving the notice referred to in subsection (1).

"1d. Subsection 96(2) of the said act is repealed and the following substituted therefor:

"(2) The tenant is responsible for ordinary cleanliness of the rented premises, except to the extent that the tenancy agreement requires the landlord to clean them.

"(2a) The tenant is responsible for the repair of damage caused by the wilful or negligent conduct of the tenant or of persons who are permitted on the premises by the tenant.

"1e. Subsections 108(1), (2), (3) and (4) of the said act are repealed and the following substituted therefor:

"(1) Notwithstanding sections 100, 101, 102, 103, 104 and 105, where a tenant fails to pay rent in accordance with a tenancy agreement, the landlord may serve on the tenant notice of termination of the tenancy agreement effective not earlier than,

"(a) in the case of a daily or weekly tenancy, the seventh day; and

"(b) in the case of a tenancy other than a daily or weekly tenancy, the twentieth day,

"after the notice is given.

"(2) The notice of termination shall specify the right of the tenant to avoid the termination of the tenancy by payment of the rent demanded,

"(a) in the case of a daily or weekly tenancy, within seven days; and

"(b) in the case of a tenancy other than a daily or weekly tenancy, within 14 days,

"of the tenant receiving the notice of termination.

"(3) Where a tenant who received notice of termination under subsection (1) pays to the landlord the rent that is due in accordance with the tenancy agreement and within,

"(a) in the case of a daily or weekly tenancy, seven days; and
"(b) in the case of a tenancy other than a daily or weekly tenancy, 14 days,

"of the day the tenant receives the notice, the notice of termination is void and of no effect.

"(4) Where a tenant fails to pay the rent demanded,

"(a) in the case of a daily or weekly tenancy, within the seven days mentioned in clause (2)(a); and

"(b) in the case of a tenancy other than a daily or weekly tenancy, within the 14 days mentioned in clause (2)(b),

"the landlord is entitled to make application forthwith under section 113.

"If. Clause 121(4)(a) of the said act is amended by inserting after 'water' in the second line 'food.'

"2. This act comes into force on a day to be named by proclamation of the Lieutenant Governor and applies to tenancies under tenancy agreements entered into or renewed before and subsisting on that day or entered into on or after that day."

Mr. D. R. Cooke: I think your motion is excellent, Mr. Reville. Your own rehabilitation during the course of the hearings has been commendable.

Mr. Reville: It gives one hope, does it not?

Mr. D. R. Cooke: It does.

Subclause 1(2)(c)(ix) refers to "accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care..." You have a very wide meaning for that, I take it.

Mr. Reville: Yes. In fact, subclause 1(2)(c)(ix) spells out in words what subclause 1(2)(c)(viii) spells out in legislation.

Mr. D. R. Cooke: But subclause 1(2)(c)(ix) would include, I hope, a private rooming house if the general purpose of that home was one of those purposes set out.

Mr. Reville: That is the intention of the exception, and it reflects the evidence led before this committee that there are some circumstances in which tenancy is more than the provision of a place to live and includes other kinds of services to which the tenancy is attached.

Mr. D. R. Cooke: I am just wondering--I am not sure that I agree--would it help if we included in that definition even if it were a privately operated boarding house?

Mr. Reville: I do not think it is necessary to do that. If it is of any comfort to you, let me say that the solicitors for the Attorney General have been over this stuff with their very fine tooth combs. You may want to direct that question to the parliamentary assistant.

Mr. D. R. Cooke: I appreciate that you are seeking a lawyer's assistance as well.

Mr. Reville: You may want to glance at the back of the room to see some of the solicitors in question.

Mr. D. R. Cooke: Maybe they could nod.

Mr. Reville: They are all looking cheerful and nodding.

Mr. D. R. Cooke: They are nodding that in their view a privately operated boarding house that in essence had a therapeutic purpose, as opposed to a money-making purpose, would come under this section. All right. I am happy. I will vote for all that.

Mr. Jackson: As I understand the process, Mr. Chairman, we are going to deal directly with Bill 10. We are not going to receive amendments from the Liberal Party. We are going to deal directly with the bill in its re-presented form.

I have several minor amendments which are additions and enhancements to the bill; they can be tabled when the appropriate section emerges. There will be a divisional vote on this so we can vote on each section; is that your understanding?

Mr. Chairman: Yes.

Mr. Reville: May I suggest a way of dealing with this? Seeing that my amendment is fairly all-encompassing, and seeing that Mr. Jackson has a number of amendments that speak to specific sections thereof, would it be appropriate for Mr. Jackson to lead his amendments at this time, to speak to them? We can take the votes on his amendments; if they succeed, then they will be amendments to mine. At the conclusion of that, we will then vote on my amendment. If that is satisfactory to Mr. Jackson, that may be a convenient way to do this.

Mr. Chairman: What sections do your amendments relate to?

Mr. Jackson: Section 1. I have tabled two--

Mr. Chairman: I have them now.

Mr. Jackson: One is to subclause 1(2)(c)(v), where I have a differing interpretation of the owner-occupant exemption. Perhaps I will read that into the record at the moment.

Mr. Chairman: This will be an amendment to an amendment then, because Mr. Reville's is in effect an amendment to the original motion that he put forward in his Bill 10. You are now amending his amendment.

Mr. Reville: Right.

Mr. Jackson: That is correct.

Mr. Chairman: So the vote will then take place on the amendment to the amendment, followed by yours?

Mr. Reville: Correct.

Mr. Chairman: Mr. Jackson moves that Mr. Reville's proposed amendment adding clause 1(2)(c) be amended by striking out the wording of subclause (v) and substituting therefor the following:

"(v) accommodation in a private home that is occupied by its owner where no more than four persons are tenants in the home and those persons are roomers, boarders or lodgers."

Do you want to speak to that briefly, Mr. Jackson? Then I will accept any other comment after your remarks.

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Mr. Jackson: This is substantively Bill 59, which the Attorney General referred to, which I tabled in the House. The focus here is to respond to a growing situation that reflects more accurately, in my opinion, the kinds of roomer-boarder situations that are occurring in suburban neighbourhoods in Ontario, typically in homes that are under 40 years of age. I suggest the amendment presented by Mr. Reville has a particular relevance to homes that are over 50 years of age. If time permitted, we could get into a lengthy debate about that.

More particularly, my amendment insists that the owner must reside there, and not a major litany of family members. Had the Attorney General been here I might have asked him what constitutes a spouse--if a spouse is a domestic arrangement and of what duration.

I consider it administratively complicated to deal with the original amendment, to be examining kitchen facilities as the means on which basis an individual is within or outside of the Landlord and Tenant Act. Rather, the amendment I am proposing indicates that if you are providing this service for more than four persons you are in effect operating a business.

Under the original amendment it is possible in Ontario to have 10, 15 or 20 roomers and boarders in a single building. In my opinion, that would constitute the operation of a business. It would not be what the intended purpose of this amendment--an exemption--was all about. It was to respond to a certain housing network and its growing availability in suburban Ontario without in any way limiting or inhibiting the intent of Mr. Reville's main bill, which is to bring roomers and boarders within the full force and effect of the Landlord and Tenant Act. That is the rationale.

The amendment in its present form will create some difficulties which will only become apparent after people start playing with it. I believe my amendment tightens it up considerably, and I think that is what the intent was all about.

Mr. D. R. Cooke: In actual fact, I think Mr. Reville's definition is much preferable. I think that Mr. Jackson is concerned about having a large number of people in the same institution, and yet we could not have a large number of people and be exempted from this, unless they were sharing kitchen or bathroom facilities. The only thing I can imagine would be a very camp-like or institution-like setting, which should not be subject to the Landlord and Tenant Act in any event.

It is a more fluid definition. In so far as "spouse" is concerned, Mr. Reville might want to add a definition of "spouse" to the act, but I think the courts would look to other legislation, conceivably the Family Law Act or

something of that nature. I do not see that this is a difficult problem at all.

I think there are serious problems in trying to define a number. We did talk about that when we were dealing with various witnesses--as to the number of tenants in a home, be it four, five or three. I prefer Mr. Reville's amendment, so I will vote against the amendment to the amendment.

Mr. Reville: I am very sympathetic to what Mr. Jackson is trying to achieve here, and I understand now the situation that he is trying to protect. It is true that the housing situations I mainly contemplate are indeed older houses, which of course are more prevalent in large urban areas.

I think there are two problems with Mr. Jackson's approach. One is that I suspect it contravenes section 15 of the Charter of Rights and Freedoms because it is arbitrary about the numbers. I want to say to him that my definition of "owner," and the list that then follows it, is identical to that contained in section 105 of the Landlord and Tenant Act, which allows a landlord to evict somebody because he is going to occupy the premises himself. It is the same list--owner, owner's spouse, child or parent--that I have used, which is defined in the Landlord and Tenant Act, and is precise.

What I have tried to do in this amendment is to guard against what I call the Parkdale effect, in which a landlord puts a very large lock on a door of one of the rooms, claims that he or she lives there, uses the bathroom from time to time--New Year's Day--and thereby seeks to claim an exemption from the Landlord and Tenant Act for the residents of that home. That clearly would be a perverse situation.

I want to ensure that we do indeed protect the Mrs. Murphy who rents out a couple of rooms in her house, or more, uses the kitchen and/or bathroom, and therefore might be at some inconvenience and/or risk if in fact we took a more rigid approach.

I deeply sympathize with the situation, which I suspect occurs in a back-split or a bungalow in some newer municipalities, but I do believe that 99.6 per cent of the situations will be covered by the approach I have taken in my amendment to subclause (v). I invite you to bring the other circumstances to my attention and I will give them some advice as to how to protect themselves.

That is it. That is my speech.

Mr. Chairman: Mr. Partington--unless you want to give Mr. Jackson an opportunity to respond first.

Mr. Jackson: I will respond last. Then we can vote and get on with it.

Mr. Partington: I want to speak in support of Mr. Jackson's resolution and perhaps talk a bit about Mr. Reville's resolution.

Mr. Reville's resolution is more appropriate for older houses. I can think of Brock University in St. Catharines, where most of the houses within a mile or two of that university are probably 20 years old or less. My concern would be in owner-occupied houses, parts of which are rented out to students or boarders, where there may be separate kitchen and bathroom facilities, but nevertheless the facility is a house and there is plenty of opportunity for common usage of parts.

It seems to me that Mr. Reville's proposed subclause 2(v) would not help that type of owner. With that type of owner, there could be private kitchen and bathroom facilities, which boarders, lodgers or roomers would use, and yet he would not be exempt from the Landlord and Tenant Act.

Mr. Jackson's amendment covers both and is more appropriate. It seems to me that, with Mr. Reville's amendment, there still could be resistance by many home owners in renting out parts of their homes to students or other roomers, whereas Mr. Jackson's amendment would clearly accommodate that concern.

Mr. Jackson: I will summarize and respond to Mr. Cooke, first of all. He may be having difficulty with numbers, but certainly the provincial Legislatures of Quebec and Manitoba and Dale Bairstow had no difficulty with numbers because they clearly felt that numbers were the route to go. It was through the reading and understanding of the arguments presented by those three forums that I came to appreciate how important capping and numbers were to the overall situation. I will then illustrate Mr. Reville's concern, to assist Mr. Cooke.

If you look at the family-tree approach to housing, as proposed in this amendment, it is possible for a single owner to own up to eight buildings, with various family members peppered around a given community, to operate rooming-house operations which are in fact businesses but in no way reflect the kinds of protection that roomers and boarders are seeking under this legislation. That is the very real kind of abuse that I am looking for.

Mine simply states that if you are the registered, entitled and deeded owner of the building, you must be resident and live in that building. If you do not, you have no business parachuting your grandmother into a university town, operating a rooming house and having all these exemptions.

Mr. Reville: A grandmother does not get covered.

Mr. Jackson: No. But if you deed the property to the parent in trust, then the grandmother becomes the parent. This has not shown up in any provincial Legislature where the exemptions have been considered. It did not even surface with respect to Bairstow. It did with the advisory committee, and God knows where they came up with the notion. But I consider it an area for the potential of abuse.

1610

I wish to be on the record because, more importantly, it does not cover off the situation. Mr. Reville, your example of numbers being against the charter will not hold, because in fact we do limit the number of units under Bill 11, which was passed recently by the Legislature: Certain rights are removed for landlords and tenants, whether or not you live in a building composed of four or fewer or five or greater units.

For the purposes of Hansard, I have laid out concerns I have with this. In my conversations with Mr. Reville, I explained situations where a self-contained rooming situation can exist in the basement of a house; that service is essential in some communities because it provides the only means of accommodation, given that there is no old housing stock to convert and that the people who provide that service will refrain from doing so unless, as Mr. Reville has suggested, they go down and fry an egg once a month on their tenants' stove and therefore they can beat the law.

I consider that poor legislation. I considered my amendment carefully and I will leave it at that.

Mr. Chairman: I have a couple of questions, one regarding the comment Mr. Reville made with respect to a number perhaps being challengeable under the Charter of Rights and Freedoms. I can think of a vast number of pieces of legislation that use a benchmark number of some kind or another. Do you hold firmly by that statement, irrespective of what the number might be?

Mr. Reville: Obviously, I cannot predict what the brothers and sisters on the Supreme Court bench might decide on any given day. However, I have avoided that situation entirely by not signifying a number. Whether the Supreme Court might decide that four is discriminatory but six is not, I cannot really say. In fact, I am not relying on that one argument with a huge amount of reliance.

Mr. Chairman: I am thinking of the bill brought in by the Minister of Labour, as an example, with respect to company layoffs. The number 50 was used in one instance and the number of \$2.5 million was used as a total gross payroll. Those kinds of things are quite common. That is not the reason you are objecting to the number four.

Mr. Reville: Your point is well taken. I will certainly reduce the emphasis you may have felt I put on that one argument.

Mr. Chairman: I just did not want to leave the impression that by putting in a number we were doing something that might be inappropriate at some future point.

The other question I had, also for Mr. Reville, was in connection with the proposed amendment to the amendment. One of the things that was not said all that clearly, I do not believe, by either Mr. Partington or Mr. Jackson, but which I think was implied in their remarks, was the fact that by putting in the number four they are attempting to promote the use of units or the additional housing that may come forward as a result of having an exemption up to the number four. I think that was implied in their remarks.

I want to state very clearly that I see some advantage in that, in that there are some who perhaps will not make that housing available if they feel they do not qualify for exemption under this legislation and feel a little too encumbered by the amendment you have put forward. I wonder if you see any validity in the argument that more housing may be brought forward or, to use the reverse side of the coin, less housing will be removed from the market as a result of a number being placed into the legislation.

Mr. Reville: The argument that you make, and that Mr. Jackson and Mr. Partington make, is not an invalid one. However, what you discover when you talk to people who are contemplating renting a room is that when they discover they are also covered by the Residential Rent Regulation Act and the Rental Housing Protection Act, they find two impediments that already exist to their so doing. Many people who operate a tiny rooming house with one or two rooms do not believe they are covered by Bill 51 and Bill 11, when in fact they are.

I reviewed the appropriateness of trying to put a particular number on the legislation so as not to discourage people from offering part of their home as additional accommodation, which is much needed in this province. I think the way to do that is not by reducing the rights of the people to whom

they would rent but by making it much easier for them to convert their premises through user-friendly housing supply programs and information and assistance to people who would do that so that they understand what the rules are and find them easy to deal with and in fact get interest-free money so to do. The current programming that we have is not user-friendly at all for persons who would like to make some modifications to their homes, to rent them out; and in fact once they go through committee of adjustment and find out they have to provide 50 extra parking spaces and all the nonsense that our municipalities require, they wish they had never bothered in the first place.

I think if we approach it that way, rather than by limiting the rights of people who will live there, we will indeed get good housing and happy landlords and landladies. How about that?

Ms. Gigantes: There is a better way.

Mr. Reville: There is a better way.

Mr. Chairman: Some might suggest there is a better way.

Mr. Reville: There are half a million units in this province just waiting to be created in that way.

Mr. Jackson: I have a final comment. Before we get too deep into creating new programs, let us put in perspective that both the government amendment and my amendment to the amendment in this area are in an area where we have nonconforming use. One of the problems is that when a tenant, a roomer and boarder who would then become a tenant, can seek remedy under the Landlord and Tenant Act, two things happen. There is a remedy under the Landlord and Tenant Act, but there is also the fact that the municipality is then put in a position where it is left with no other option but to eliminate that form of tenancy because it is nonconforming. That has also been discussed in committee and shared with Mr. Reville.

I think we should put in perspective that my amendment is partially in recognition of those nonconforming uses, which now, by virtue of including them in some act, will force municipalities--which has been the occasion in the community of Burlington where we are losing our housing stock because of these kinds of filings of notice and so forth, that we wish not to impose on them any more than there already are.

I would be pleased if you called the question and proceeded with the vote, Mr. Chairman.

Mr. Chairman: Mr. Jackson's amendment to the main amendment will now be put before the committee. All those in favour of the amendment to the amendment?

Mr. Reville: Do you want it recorded?

Mr. Jackson: No, I do not need that.

Mr. Chairman: All those opposed? The motion is lost. We will go to the main amendment now, which was put by Mr. Reville.

Mr. Jackson: Are we splitting votes? I thought we were doing the whole bill. You are going to do my amendments--

Mr. Chairman: Do you want to go to your second one?

Mr. Jackson: No. I am inviting you to tell me. I thought that was what we were doing. Let us get all of mine out of the way and then we can go on to the main motion.

Mr. Chairman: That is fine.

Mr. Jackson: I have tabled, in one sheet, amendments to subsection 1(2). They are not amendments, they are additions, actually, as amendments to the amendment. I would like to deal with each separately, if I may.

Mr. Chairman: Mr. Jackson moves that the proposed amendment to subsection 1(2) be further amended by adding the following subclause thereto:

"(xi) accommodation operated as a church-sponsored group home and provided on a nonprofit charitable basis."

Mr. Jackson: May I speak to that?

Mr. Chairman: Do you want to do them all together?

Mr. Jackson: No. I asked that they be split because I have inappropriately placed (xiii).

Mr. Chairman: All right. We will speak to subclause (xi).

1620

Mr. Jackson: Thank you. I will be brief. Several groups came before the committee hearings with respect to the operation of group homes. It was abundantly clear that some provided a form of care by virtue of a funding component or falling under the auspices of one of the acts as set out in Mr. Reville's subclause 1(2)(viii).

Early in the hearings I requested clarification on specific groups, Ecuhome Corp. and Homes First Society. There is some difference of opinion as to whether or not those group homes are covered in Mr. Reville's bill. Therefore, I am proposing this amendment. I prior advised the Attorney General that I would be satisfied if, for purposes of the record, he could assure us they were included. If they were not, then I would hope this amendment, as worded, would provide that inclusion. That refers back to comments that both Mr. Reville and I made earlier with respect to a notice prepared and delivered this morning by Homes First.

I will be pleased to answer any further questions. Please note that I am indicating a church-sponsored group home. You could delete "church-sponsored" if you wished to expand it. That is optional, but I put it in in that form. We could have it further amended to just say a group home that is operated as a group home but not covered under any of the acts as set out in subclause (viii).

Mr. D. R. Cooke: I do not know whether it is appropriate to move an amendment at this point because I think we have already got an amendment to an amendment. I read the minister's view as being supportive of this amendment, but I had trouble with the words "church-sponsored" myself. It seems to me you would accomplish more by talking about accommodation operated as a group home and provided on a nonprofit, charitable basis. That would force the operation

to have an income tax number, presumably, but not necessarily have a church connection, which may or may not be advantageous. I would not like to see that it would have to have a church connection.

Mr. Ward: I understand it is the minister's opinion that what is being proposed under subclause 1(2)(v) of Mr. Jackson's amendment is indeed covered under subclauses (viii) and (ix) of Mr. Reville's amendment, and therefore Mr. Jackson's proposed amendment is redundant.

Mr. Reville: Again I appreciate the intention of Mr. Jackson's amendment. I am aware of the representations made by both Homes First and Ecuhome, which do indeed operate what might be described as church-sponsored residences. It is my belief that the funding comes under the Ministry of Community and Social Services Act, which is specifically mentioned in subclause (viii) of my amendment.

I do know that in both cases, both those organizations have created an administrative process to review evictions to ensure that people who are on the line for evictions have an opportunity to try and change the mind of the evicting party. I know that they are concerned that other organizations may not have such a good process and that in fact they have led strong representations that the minister create a requirement for such processes.

It is my belief, Mr. Jackson, that the situation you contemplate is indeed covered by my amendment. I also should point out that your choice of words may not be as felicitous as it might be. A group home is a specific kind of residential use, which normally means a detached house in which reside three to 10 people and which is operated by a government-funded agency; it is very specific, and upon that definition hangs a whole lot of zoning throughout the province under the Planning Act. It may be that you are describing a housing situation in a sort of subjective way rather than a precise way.

I think we know what you mean and I think it is covered. My feeling is that the amendment is well intentioned but redundant.

Mr. Jackson: When I talked to the Attorney General, he indicated he was not aware of the specifics and held in reserve his decision that in fact it was or was not included. We discussed the distinction between ongoing operational funds and capital funds. If Mr. Reville is satisfied that is a situation where no ministry or act is involved with the ongoing operation and they are therefore deemed to be in the act, then I am satisfied.

However, as I have indicated, at least one of the groups had indicated that it did not receive provincial funding in any form and would therefore come into full force and effect. That is separate from capital funds to create the specific housing--bricks and mortar--but the ongoing operation is a function of the charitable organization, which is at the mercy of United Way, the church and board of directors in its fund-raising and the revenues from rental. But in no way were they involved in any ongoing ministerial funding.

If Mr. Reville is satisfied that they do not require that exemption, I am satisfied that I have at least put it forward for those groups that have asked for it.

Mr. Chairman: Do you wish to withdraw?

Mr. Jackson: No. I do wish to remove "church-sponsored" and replace it with "accommodation operated as a group home and provided on a nonprofit charitable basis."

Mr. Chairman: Effectively, you are amending your amendment now.

Mr. Jackson: I can do that.

Mr. Ward: We will take it as read.

Mr. Chairman: Let us take it as read, but for purposes of Hansard we will read it again so we have it clearly.

Mr. Jackson moves that the proposed amendment to subsection 1(2) be further amended by adding the following subclause thereto:

"(xi) accommodation operated as a group home and provided on a nonprofit charitable basis."

All in favour of that amendment? Opposed?

Motion negated.

Mr. Chairman: Mr. Jackson moves that the proposed amendment to subsection 1(2) be further amended by adding the following subclause thereto:

"(xi) accommodation whether situated on or off a farm, where occupancy of the premises is conditional upon the occupant continuing to be employed on the farm."

Mr. Jackson: The amendment basically is covered in regulations, but it further clarifies that the accommodation for the work of that farm may not be physically located on the farm premises but that the purpose of that accommodation is a function or forms part of the employment agreement.

Mr. Reville: I think this is a good amendment. I will support it. I was in this exact situation in 1966 when I was a farm-hand on a dairy farm and my accommodation was provided along with my employment. When my employment was terminated, so was my accommodation.

Mr. Jackson: If you were a farm-hand, which hand did you use?

Mr. Reville: I used both hands. Have you ever counted the taps on a cow? I will support this amendment.

Mr. Ward: I did not know the NDP caucus was so large. We will support it as well.

Mr. Chairman: Since we have almost total unanimity on this one, I will call the motion.

All in favour of the amendment?

Motion agreed to.

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Mr. Jackson: My final amendment is before the committee and set out as subclause (xiii). However, it is inappropriately placed since I am amending chapter 232, the Landlord and Tenant Act, subclause 1(c)(iii), which reads identically to the one I have presented before the committee with the addition of the words "or agricultural" after the word "business" where it appears in the aforementioned subclause.

Mr. Chairman: Would you read the clause as you are now amending it into the record?

Mr. Jackson: It would read as follows: "premises occupied for business or agricultural purposes with living accommodation attached under a single lease unless the tenant occupying the living accommodation is a person other than the person occupying the premises for business or agricultural purposes, in which case the living accommodation shall be deemed residential premises, or...."

Ms. Gigantes: Should that not be "shall be deemed to be"?

Mr. Jackson: It has to read that way because I am amending this section.

Mr. Chairman: Can I ask a question with respect to the third line? You use the word "tenant" rather than "person." In your written copy you had "person." Did you intend to do that? Were you amending that as you went through it?

Mr. Jackson: Yes. When I consulted with the Attorney General, he advised me that my amendment was already included in the act, except there seemed to be some debate about whether or not the farm is operated as a business and whether or not "business" was sufficient to describe a situation with a farm. I sensed there was no disagreement on the part of the Attorney General with respect to further clarifying the concept of a business or agricultural purposes.

Mr. Reville: I think that is a worthy amendment and I will support it.

Mr. Ward: We support the amendment, even though it is redundant.

Mr. Gigantes: Let us have a vote.

Mr. Chairman: I was just looking for the nodding of heads.

Motion agreed to.

Mr. Jackson: That completes my amendments, Mr. Chairman. I thank you for doing such a stellar job in facilitating their speedy--

Mr. Chairman: The solicitor would like to raise a question.

Ms. Schuh: Have I understood you right, Mr. Jackson? Do you want to strike out subclause 1(c)(iii) of the act and substitute the wording of the motion that just carried? Where is the new subclause going?

Mr. Jackson: Right there.

Ms. Schuh: In other words, it is what I just asked. You want to strike out 1(c)(iii) of the act.

Mr. Jackson: No. I want to amend it by including the words "or agricultural" after the word "business." That is all.

Ms. Schuh: We will need to make some changes in the plumbing, if I can call it that.

Mr. Jackson: Terrific. Help me.

Ms. Schuh: If I have the committee's indulgence to do that, we will simply take care of it in the printing, but I think it will be necessary to move your amendment into subsection 1(1) of Mr. Reville's printed motion.

Mr. Jackson: I am sure Mr. Reville and I agree to that.

Ms. Schuh: Anyway, it will not look quite the way it does now, but it will all be there.

Mr. Jackson: That is fine.

Mr. Reville: As long as what we are doing is adding "or agricultural" after the word "business" in that situation--

Mr. Chairman: Could you start over again.

Mr. Reville: Yes. I am sorry. I was not in my place. I was reading over the shoulder of the research officer.

The intention, I believe, is to add the words "or agricultural" to the Landlord and Tenant Act, subclause 1(c)(iii). Is that correct, Mr. Jackson? In other respects it would be the same.

Mr. Jackson: Yes.

Mr. Reville: I am content.

Mr. Chairman: In terms of the editorial revisions, are you happy with what has been suggested by the drafters of what you are proposing?

Mr. Jackson: Happy would be an understatement.

Mr. Chairman: Ecstatic?

Mr. Jackson: Close.

Mr. Chairman: Fine.

Mr. Reville: That is carried. Can we vote on my amendments now?

Mr. Chairman: Mr. Reville, I am calling the votes.

Mr. Reville: You are moving right along there.

Mr. Chairman: Yes. All right. How do you want to take Mr. Reville's amendments? I gather from earlier discussions that have been held that there is reasonable agreement on all of them, so can we take them in their totality?

Mr. Reville: Yes.

Ms. Gigantes: All together now?

Mr. Chairman: All together now. Okay, we will be moving everything that is contained in the amendments put forward by Mr. Reville.

Motion agreed to.

Sections 1 and 2, as amended, agreed to.

Mr. Reville: I move that the bill, as amended, be reported.

Mr. Chairman: We have a couple of things before we do that.

Mr. Reville: Well, let us do them.

Section 3 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Reville: Thank you all for your co-operation.

The committee adjourned at 4:37 p.m.

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